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European Commission

Banking Package 2021 comments regarding the proposal for amendments in CRD

The Swedish Bankers´ Association represents banks and financial institutions established in Sweden. Our aim is to contribute to a sound and efficient regulatory framework that facilitates for banks to help create economic wealth for customers and society. We appreciate the possibility to give feedback on the CRD6 proposal and would like to take the opportunity to comment on four issues.

Supervisory benchmarking of approaches for calculating own funds requirements

Proposed changes to CRD includes changes in scope and frequency of the benchmark exercise in article 78, including new mandates to issue guidelines and recommendations. This benchmark exercise is extensive and complex, and it is not uncommon for banks to submit data on tens of thousands of portfolios. Thus, we strongly believe that this exercise should be reduced in size and complexity in order to capture the essentials.

It is proposed to broaden the scope of the benchmark exercise to include IFRS 9 expected credit loss models, possibly also for non-IRB institutions. IFRS 9 models are not governed by the EBA but by the IASB, and therefore the proposal appears strange; extending mandates towards the EBA to monitor and benchmark regulation of the IASB. From that perspective it would be appropriate to omit IFRS 9 models. However, if one decides to keep IFRS 9 models in scope of the benchmark exercise, there should be clear criteria for when non-IRB institutions need participate in the exercise to assure consistency in reporting requirements. Further, the amount of data should be limited, i.e., not as extensive as for IRB purposes, and any additional requirements should be duly justified.

We also notice that in paragraph 6 of article 78 the EBA is given a carte blanche to issue guidelines and recommendations as they see fit. Guidelines form an important part of regulation, and mandates for authorities to exercise such rights should not be arbitrary. That would be a resignation from its responsibilities by EU legislative bodies, i.e., of the parliament and the council.

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Finally, the EBA is given the option to carry out the benchmark exercise biennially instead of yearly. Given the size and complexity of this exercise, we strongly believe that annually would suffice.

ESG risks

We recognise that ESG factors could be a source of financial risk and therefore support the ongoing efforts of banks and regulators to ensure risks stemming from such factors are properly identified, understood, managed and supervised. Banks have an inherent interest in measuring and managing risks properly as risk management and risk redistribution is core to the banking business.

It is introduced (CRD art. 87a) a sustainability dimension in the prudential framework to ensure a better management of ESG risks. Also, the competent authorities are enabled to review banks' alignment with the relevant Union policy objectives or broader transition trends relating to ESG factors and banks' management of ESG risks. The EBA are mandated to specify further the criteria for the assessment of ESG risk. We note that the EBA are given a very broad mandate to specify the details in guidelines. According to the proposal the EBA shall publish the guidelines 18 months after entry into force of CRD6. The time frame leaves EBA with very little time to prepare the guidelines. It is important that these guidelines are carefully considered before they are published.

Both authorities and institutes are proposed to prepare ESG stress tests (starting with climate). We note that the EBA, EIOPA and ESMA shall develop guidelines ensuring consistency and common standards for stress tests of ESG (CRD art. 100). It is important that EBA and the ECB work together to ensure uniform access to data for institutions in the euro area and outside the euro area.

Adjustments accompanying the introduction of the output floor

In order to avoid double counted risk due to the output floor it is proposed that supervisors and national authorities reconsider the appropriate level of pillar 2 and systemic risk buffer, respectively, for institutions bound by the output floor. We are of the opinion that the suggested provisions have to be clarified in order to ensure uniform application within the EU. Further, the Commission's position that only the model risk component should be considered when assessing double counting of risks is too narrow, as the identification of risk drivers in the buffers is not always clear. A more thorough analysis of double counted risks should be done for each Member State level and a common approach should be agreed to achieve a level playing field.

Suitability assessment – ex-post suitability assessments

The main concern is the requirement which states that competent authorities shall carry out the suitability assessment before members of the management body take up their positions (Article 91 b) and before the heads of internal control functions and chief financial officer are to be appointed for their role (Article 91 d).

Initially it can be noted that the stated rationale for the said proposals is to give the supervisors the necessary tools and powers to properly control enforcement of prudential rules. There is no presented evidence or reason in the impact assessment report for a change from an ex-post to an ex-ante assessment. No numbers have been presented as to the occurrence of situations where the present *ex post* regime has created a problem. Nor are there any convincing arguments supporting the idea of harmonising management body approval regulations. Instead, the proposed requirement risks creating unpredictability, reduces legal certainty and unnecessarily increases the administrative burden on the affected companies.

The definition of management body most often applies, in a Swedish context, to the entire board and the CEO. The Annual General Meeting appoints all board members, and the Board members appoint the CEO. The great majority of large, listed companies in Sweden, including banks, use some form of nomination committee for the selection of candidates for board assignments. Moreover, pursuant to applicable EBA/ESMA guidelines, a suitability test is already carried out by the bank before an assignment of a board member, CEO or for that matter heads of internal control functions and chief financial officer. The time aspect is of utmost importance both in the nomination of board members and CEO and in the appointment of senior executives. The internal review can be estimated to take some time, and in addition to that the assessment conducted by the competent authority may take as long as 120 working days. All in all, the two assessments will amount to at least 7 to 12 months. It seems obvious that such a long period of assessment cannot be either legally certain, predicable or effective. In particular, it will endanger a company's capability to convene general meetings within the legally prescribed time limits and it is not a given that supervisors will appreciate the extra stress put on them to finalise this task within a certain time.

As an internal examination takes place before taking up a position, it must be sufficient for the competent authority to subsequently examine the suitability. Moreover, apart from the ex-post assessment, the competent authority has other tools that gives it the power to act if an appointment is not appropriate.

In case a person leaves his or her post prematurely, it is important to be able to fill the post very quickly. This will not be possible with an ex-ante assessment requirement. An example from the Swedish law is if the CEO resigns, in a listed company, the company needs to appoint a new CEO within 6 weeks. Otherwise, the

Companies Registration Office can request the company in liquidation. The same applies if the number of board members does not correspond to the minimum number set out in the articles of association. And when it comes to senior executives such as the CFO or heads of control functions, these posts need to be filled immediately – at least on an interim basis – when the previous officeholder resigns form her/his position. We note however that article 91 d not only demands ex ante assessment by the competent authority but that it even lacks the possibility of ex post assessment if strictly necessary. We therefore suggest, as a minimum, that the possibility of ex post assessment if strictly necessary (as in art. 91a) is added also to article 91 d, so that it also covers the CFO and the heads of control functions.

Furthermore, all information that in some way relates to an issuer has the potential to be classified as inside information (EU regulation 596/2014). With a requirement for an ex-ante assessment a press release thus needs to take place before the competent authority´s assessment is completed. This may result in a need for the press release on the appointment to be withdrawn or denied due to an unapproved assessment by the competent authority. In addition to an unnecessarily increased administrative burden, it may also create an unjustified negative outcome for the listed company and the individual in question.

In summary, the Swedish Bankers´ Association believes that there are no clear reasons presented for a change to an ex-ante assessment by the competent authority. On the contrary, the current ex-post assessment system has proven to work well for both the banks and the competent authority. All candidates are tested internally before appointment takes place and the competent authority can act if an appointment would not be deemed appropriate.

SWEDISH BANKERS' ASSOCIATION

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