German Banking Industry Committee

Die Deutsche Kreditwirtschaft

# Comments[1]

## On DG FISMA consultation paper on the possible impact of the CRR and CRD IV on bank financing of the economy

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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[1] Please note that these comments are subject to the final approval by the committees of the Association of Germen Public Banks (VÖB).

## Comments On DG FISMA consultation paper on the possible impact of the CRR and CRD IV on bank financing of the economy

### Capitalisation

1. ***What role has been played by the CRR and CRD IV requirements in the recapitalisation process, in terms of the timing and overall effect on the levels and quality of capital held by banks? How have market, supervisory and regulatory capitalisation demands interacted to make banks adjust the level of capital they hold to the current level? Whilst these three factors may be interlinked, is it possible to identify which has/have played the most important role?***

The CRR and CRD IV establish the framework for higher capital requirements and provide for transitional arrangements. However, these transitional arrangements have been ignored to a certain extent both by the supervisory authorities and by the market. For example, the stress tests required that the provisions of the CRR should be observed "fully loaded"; it was not permitted to apply the transitional arrangements. The market subsequently adopted these specifications, with the result that the banks concerned were unable to make use of the transitional arrangements. This led to the extremely rapid adoption of the tougher capital requirements. Although this strengthened banks' levels of capitalisation at an early stage, this process is open to criticism from the perspective of the principle of legitimate expectations, especially since the transitional periods specified in the CRR already superseded those specified in CRD II ahead of schedule.

Finally, the transitional arrangements are extremely complex, which has led some banks to refrain from applying them.

We cannot understand why capital that has already been generated, such as the contingency reserves in accordance with section 340f of the *Handelsgesetzbuch* (HGB – German Commercial Code), is only eligible to a limited extent.

In general, the CRR and CRD IV improved the quality and the adequacy of own funds in banks and, therefore, led to more safety for depositors. It has also forced banks to hold higher risk provisions and coverage potentials and to incur less concentration risks. However, increasing regulatory requirements have no positive effect on lending itself. On the contrary, higher capital requirements force banks to decrease RWA which may force them to refuse more borrowing requests than before.

For banks the increasing capital requirements in combination with the low interest rate level cause dramatic profitability problems which lead to realignments of business models and strategies. Additionally, mergers between banks have increased and will further increase. Most banks, at least in Germany, focus on retail and the corporate business which has further increased competition.

This development is at the same time negatively influenced by higher regulatory compliance costs which cannot be covered by revenues. The total impact of the complete Basel III-package might only fold out later in the future.

During the recapitalization process, banks tried to reduce business volumes especially in non-performing portfolios and increased capital via diverse capital transactions and disposal of business segments.

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Especially the market put pressure on the banks to be in line with regulatory requirements and to meet the capital requirements. Additionally, market intermediaries and rating agencies focused on the development of the common equity tier 1 and therefore demanded banks to transform their capital into CET 1 very soon. Supervisory pressure was given due to short timeframes for adaption and consistent reporting requirements for providing supervisors the data to analyze and evaluate the implementation of Basel III. Especially with regard to capital, banks were forced to hand in capital plans and to report on their measures. The highest pressure came from supervisors, especially due to the fact that banks were confronted with different supervisory authorities which demanded a large volume of information for stress testing purposes, recapitalization, asset quality reviews and other exercises at the same time.

Yes, it is possible.

Rank:
1. Regulatory demands
2. Market demands
3. Supervisory Demands

The factors are much interlinked:

1. Regulatory demands set a new level of required capital – but only for the future (fully loaded 2019);
2. Markets adopted to the new level of required capital, set by regulators, but not for the future, but immediately after announcement by regulators (basically with publication of Basel III-framework, 2010);
3. The same holds true for supervisors who required stricter capital levels (e. g. in their stress tests) very early.

***2. If you consider that capital levels go significantly beyond what is necessary in light of the level of risk incurred and posed by banking activities in certain areas, please specify those areas and back up your view with specific evidence.***

Without the SME supporting factor the risk weights contained in the CRR are too high particularly for loans to SMEs, in comparison to loans to corporates. Proof of this is provided by a research paper by Deutsche Bundesbank published in 2013 (Discussion Paper 22/2013).

The same applies to securitisation positions. The risk weights here are considerably higher than the risk weights for the underlying individual exposures.

In the IRBA, the asset-value correlation is too high from an empirical perspective (Hamerle in "Die Bank").

***3. What role have the additional capital requirements and buffers exceeding the harmonised requirements set out in the CRR played in the capitalisation process? Are such additional micro- and macroprudential capital requirements and buffers commensurate to the level of risk incurred and posed by banks? Please back up your view with specific evidence.***

It is not possible to distinguish between the effect of any additional capital requirements and of capital buffers at present.

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At the moment the observation period is not long enough yet to finally comment on the adequacy of the requirements to cover the risk incurred. Especially with regard to the capital buffers which are partly not yet in place the adequacy for each single target could not be observed. However, banks have to prepare to comply with the increasing requirements and therefore still are in the process of increasing capital.

Still, investors have incorporated them into their expectations regarding minimum capital levels, taking effect immediately. This is further enforced by new capital instruments like AT1, which have triggers around these buffer-levels, forcing banks to hold capital levels well above the trigger-/buffer-levels. The same holds true for buffers for globally systemically important institutions.

On the other hand, the European specialty "Systemic Risk Buffer" drives complexity and reduces transparency for investors, banks and regulators.

This is the case for other macro prudential measures like Art. 124 CRR, too.

Furthermore it unlevels the playing field.

Finally, the European implementation of buffers for other systemically important banks (BCBS: domestically important banks) is too complex and has too much leeway for national discretions. So it leads to the same issues as the Systemic Risk Buffer in Europe.

No, investors, in regulatory capital like AT1 and Tier 2, but also in subordinated debt and – with TLAC/MREL – even in senior debt require regulatory capital levels well above possible trigger-levels which would affect their positions.

Since certain buffers – like countercyclical capital buffer, systemic risk buffer and other – are highly unpredictable, they tend to assume the "worst case scenario" when demanding certain capital levels from banks. So this uncertainty about the height of the buffers leads to a "new normal" of required capital for banks, as investors demand additional buffers above these regulatory buffers to protect their own positions.

**Regulation — a cause of the fall in corporate lending?**

4. ***Have increased capital requirements influenced the overall capacity of banks to lend? Which factors, including demand-side factors, regulatory changes and other supply-side factors (such as the volatility of interbank and capital markets), contributed most significantly to the change in the volume of loans? How do you think bank lending would have developed had regulatory changes to capital requirements not been introduced?***

Yes, the increased capital requirements increases the costs of capital which leads to a change of the supply of credit. Therefore it will tend to reduce the supply of credit and increase its interest, unless otherwise effects superimpose this development.

However, there are probably also other reasons for the current weak state of lending, such as in particular the greater use of internal financing due to strong earnings, the fact that larger companies are increasingly turning to the capital markets to raise finance and relatively low levels of investment in Germany overall in recent years.

Opposite effects such as low market interest rates, lower euro exchange rate, high competition in the SME segment customers and the favorable economic development in Germany, however, support the demand for credit and the offer.

These requires a "demand-problem" for loans in Germany. Banks would lend more, since they have the offerings/the funds available to do so. As described above, enterprises are relying heavily on internal funding and capital market finance. This may be because they are preparing themselves for what they fear could be a bottleneck in the supply of capital.
In particular, we believe that a number of the structurally weaker EU member states have not yet finished reducing their credit exposures. Furthermore, there is a trend discernible on the part of banks when constructing loan portfolios to prefer simple, standardised finance for cost reasons.

The factors involved are demand and the economic situation.

To our observation banks have duly screened their portfolios due to the changed capital requirements. As a result they have reduced their exposures in market segments which can be characterized as high volume, high risk and long-term tickets. These portfolios are in general strucked most by the new capital requirements. In rare cases banks have completely exited these segments. In this context it must be emphasized that portfolio-changes have up to now not significantly affected the core business of banks, such as Corporate, SME and Retail lending.

In more general terms the low interest rate level is the strongest driver for a continuing high lending level. However, lending activities would have increased more without the stronger capital requirements. In the long run, companies with a weak creditworthiness are likely to be effected much more by the higher capital requirements than other companies.

5. ***Are the effects of increased capital requirements, such as they are, generally temporary and transitional or have structural changes been seen? Has the requirement to hold higher levels of capital increased the cost of funding banks? Has the per-unit cost of bank capital decreased as banks have become less risky?***

The increased capital requirements have led to a structural increase in funding costs. This is also likely to impact the credit market over time, despite the stiff competition and the low interest rate environment. At the same time, the conditions for issuing less hard capital instruments have improved as the risks contained in banks' balance sheets have declined.

Furthermore, increasing capital requirements have led to structural changes in the whole banking industry as banks tend to concentrate on the low default portfolios and there is increasing supply in the retail and corporate market.

Yes, the requirement to hold higher levels of capital has increased the cost of funding banks.

The cost of funding of banks has increased; but this may not be a result of increased capital requirements, only. Important implications stem from other regulation (like the new Bail-In-Framework (BRRD), anticipation of a leverage ratio or the new liquidity framework) and a changing environment, too. As a result, it is not clear if the per-unit cost of capital has changed in sum.

6. ***Have increased capital requirements affected the market for some categories of assets more than others? If so, which ones and how? Which of the provisions contained in the CRR, apart from those establishing capital ratios, are likely to have created the effects experienced by specific markets and/or exposures?***

Yes, we are seeing a continued trend towards reducing lendings to borrowers with a weak creditworthiness in particular. In addition large and long term tickets are more affected by the reduction as others.

The NFSR will increase the costs of long-term lending. A reluctance to long-term lending should be noted today. This is a problem insofar as Germany has a strong bias in favour of long-term loans, both for domestic and foreign (export) finance.

The leverage ratio (LR) makes business/loans with low-risk and (at the same time) low-return (like Hermes-covered export credits) less attractive. A LR may also affect loans to the public sector. As market participants expect a LR to be set, these effects take place already today.

7. ***Do you think the phase-out of the transitional provisions under CRR could have an incremental impact on future lending decisions? If so, please explain how.***

Yes, the phase-out has had immediate impact as market participants anticipated the target level, initially only required after the transitional period ("fully-loaded").

**Lending to SMEs**

8. ***To what extent has this provision been effective in supporting lending to SMEs? Could you provide any evidence, preferably quantitative, of the change in lending to SMEs due to the introduction of the supporting factor as from 2014?***

Very effective, representative data is not available yet, due to the short time horizon since the introduction of the temporary supporting factor beginning of 2014. No final assessment can therefore be made about the effect of the supporting factor on changes in lending to SME. In light of this, the analyses conducted as part of the current EBA Discussion Paper on SMEs and the SME Supporting Factor (EBA/DP/2015/02) are highly important. It is also crucial that the supporting factor is permanently introduced, so that banks have stable basis for calculation.

Nevertheless indicators like the ifo Credit Constraint Indicator (ifo Kredithürde) or the KfW Business Survey suggest a positive impact of the CRR on loan availability for SMEs in Germany (helping to maintain the generally favorable financing situation and even further it, table 1). Ifo Credit Constraint for small enterprises has decreased from 22.4 in 2013 to 19.3 in 2015. Similarly, KfW Business Survey shows that the share of small enterprises in a difficult financing situation has gone down from 20.9 in 2013 to 16.0 in 2015.

Table 1: Access to Credit indicators

| | Ifo Credit Constraint (manufacturing sector, yearly average) | | | KfW Business Survey - Indicator Deterioration of access to credit | | |
|---|---|---|---|---|---|---|
| | Large | Medium-sized | Small | Total | >25 mn EUR turnover | <2.5 mn EUR turnover |
| 2012 | 18.5 | 18.0 | 22.1 | 16.2 | 15.5 | 21.9 |
| 2013 | 16.4 | 17.6 | 22.4 | 15.6 | 12.7 | 20.9 |
| 2014 | 13.1 | 16.0 | 21.1 | 12.4 | 8.1 | 18.0 |
| 2015 | 9.4 | 12.9 | 19.3 | 10.4 | 5.5 | 16.0 |

9. ***What specific difficulties do banks face when lending to SMEs, compared to when lending to larger corporates? Are these related to the CRR? How could the CRR and other prudential regulations contribute to addressing some of these difficulties in other ways than by adjusting rules for SMEs, or do they need to be resolved by some other means? If so, what other means would be adequate?***

In general the lending situation in Germany is currently very favorable for SME. Very small enterprises in some cases face more difficulties when it comes to borrowing compared to larger SME. Low equity ratios, poor and/or insufficient information often lead to lower credit ratings. Combined with relatively small ticket sizes (disadvantageous transaction cost-return-relation) and difficulty in putting up adequate collateral puts them into disadvantage and may in turn lead to a refusal to lend.

Cross-border lending to foreign SMEs is in general more challenging than lending to local SMEs or international large corporations since it is more difficult for banks to obtain financial information, in particular where the foreign SME is located in an emerging market. These difficulties are, however, not related to the CRR and are mitigated in practice by using local relationship banks.

While in Germany, the overall SME financing situation is favorable at the moment, in other European countries financing constraints have a severe impact on the economic development of SMEs. Financing restrictions are particularly prevalent in Southern Europe as the KfW Competitiveness Indicator shows. To the extent that firms do not implement investments due to a lack of adequate financing, their future competitiveness is at risk. Especially Spanish and Italian SMEs still struggle with severe difficulties in this regard. They rate financing constraints with an average of 2.42 and 2.48, which is equivalent to a strong to medium hindrance. French SMEs rate financing constraints with 2.84, i.e. the second most important hindrance to competiveness in their country (as in Spain). In UK, with 3.05, financing constraints constitute the fourth most important hindrance.

Ongoing revisions of the prudential regulation as for example Basel IV or the Net Stable Funding Ratio (NSFR) must take into account their effects on SME-lending. We are afraid that the provision of loans to SMEs will especially be negatively affected by the recent activities of the Basel Committee on Banking Supervision (Basel IV). The Basel Committee wants to introduce a Revised Standardised Approach for credit risk, that will, according to our calculations, raise capital requirements for loans granted to SMEs substantially. This higher capital requirements shall, via the introduction of a floor, be imposed on IRBA banks as well. This will, in our view, negatively affect the working of the supporting factor.

In addition to this financial knowledge of SME should be further increase and the capital basis of very small SME strengthened.

**Lending to infrastructure**

***10. Has the CRR influenced the capacity of banks to provide loans to infrastructure projects? Which provisions are most relevant?***

Yes, supervisory capital requirements are extremely important for infrastructure finance, too. They have a direct impact on lending volumes and terms. Numerous studies have demonstrated that lending volumes decline – at least in the short term – when capital requirements increase. In addition, higher capital requirements mean higher funding costs for the banks, which have to pass these on to their clients in the form of higher risk premiums. European Banking Authority (2015): EBA Discussion Paper and Call for Evidence on SMEs and the SME Supporting Factor (EBA/DP/2015/02), para. 64 und 65.

Project finance is treated as corporate exposures for supervisory purposes. This means it is allocated a risk weight of 100 per cent in the Standardised Approach. Due to the large volumes involved, however, private infrastructure project finance is probably generally the preserve of larger banks using the Internal Ratings-Based Approach (IRBA).

In general, project finance will be classified as "specialised lending exposures" in the corporate exposure class (Article 147(8) of the CRR). If the investing banks are able to estimate the probability of default for the project company, the capital requirements are based primarily on this probability of default. Since the special purpose vehicles generally do not have much capital, the probability of default is mainly determined on the basis of the project's cash flows.

If the banks are unable to estimate the probability of default for the project company, they have to assign the finance to certain risk categories, which have been allocated specific risk weights, in accordance with supervisory criteria (this is known as the "slotting approach"). Here, too, the long maturity of infrastructure projects means that the less favourable risk weights for finance with a maturity of more than 2.5 years must be selected. According to the draft Regulatory Technical Standard (RTS) issued by the European Banking Authority (EBA), the banks must focus in particular on the financial strength of the project company, the political environment, special project risks, the strength of the sponsor and the strength of the covenant package.

In other words, it can be assumed overall that infrastructure project finance also allocated comparatively high risk weights in the corporate exposures class.

***11. What are the specific difficulties that banks face when lending to infrastructure projects? Are they related to the CRR? How could the CRR and other prudential regulations contribute to addressing some of these difficulties or do they need to be resolved by some other means? If so, what other means would be adequate?***

Financing infrastructure is by itself a complex issue. Capital and liquidity requirements as well as the LR will complicate this financing even more. In the long run, banks become less willing or able to finance

infrastructure projects which are generally risky, long-term and large volumes. In this context (as well as with SME financing), the very low ECB-interest rates currently have an opposite effect.

Long-term credits are strained with higher liquidity costs resulting from required liquidity ratios as well as higher costs for derivatives which often are needed to support a structured credit by hedging interest rate and/or FX risk.

As part of the action plans for the Capital Markets Union the European Commission has proposed a significant reduction in the capital requirements for insurance companies for investments in infrastructure projects. This should apply to "qualified infrastructure financing" with low risk due to stable cash flows.

The action plan for the capital market union also includes a review of the capital requirements for investments in infrastructure for banks. We welcome this explicitly. In our opinion the reduction of the capital requirements for banks comparable to the delegated act on Solvency II will increase the incentives to invest in project like these. Last but not least it would contribute t to a level playing field between banks and insurance companies.

12. ***Should infrastructure projects continue to be treated as loans to corporate borrowers? If not, why? What common features of infrastructure projects or their subsets would justify a separate treatment from loans to corporate borrowers?***

The thing to be avoided at all costs is the assignment of infrastructure finance to the "securitisations" exposure class. In our opinion, long-term financing for infrastructure, industrial and real estate projects, as well as for aircraft, ships and other assets is under threat from the revision of the capital requirements for securitisations that was published in December 2014 by the Basel Committee on Banking Supervision. These projects and assets are funded in some cases via structures that, if viewed in isolation, meet the definition of securitisations given in Article 4(61) of the CRR. This is the case where the finance takes the form of multiple tranches with different internal rankings. If a borrower defaults and the subordinate creditor is unable to assert its claims (a situation known as a "non-cross default"), the junior creditor would have to bear the loss.

In contrast to "true" securitisations, though, no risk is transferred with these specialised lending exposures. However, this is a precondition for assigning the transaction to one of the two forms of securitisations mentioned in the CRR. In a traditional securitisation (Article 242(10) of the CRR), the risk is transferred by selling the exposure to an SSPE (a process known as a "true sale"). In the case of a synthetic securitisation, the transfer is achieved using credit derivatives (Article 242 (11) of the CRR). Neither of these situations exist in the case of the above-mentioned specialised lending exposures. In line with this, Recital 50 of the CRR clarifies with respect to the definition of the term "securitisation" that an exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.

In section 2 of its revisions to the securitisation framework dated 11 December 2014, the Basel Committee now suggests that a securitisation exists if losses can only be assigned to the subordinated tranche. This creates a danger that specialised lending exposures with a non-cross-default clause would have to be considered as securitisations.

The problem is compounded by the fact that, due to their specific characteristics (e.g. the lack of a true sale and their low granularity), specialised lending exposures probably could not qualify as "simple, transparent and standardised securitisations" to which lower capital requirements might apply. Consequently, there is a danger that the capital requirements for these transactions will increase substantially; in turn, this would lead to a downturn in long-term lending to finance the above-mentioned projects or to less favourable loan terms. This would frustrate the European Commission's goals in establishing the Capital Markets Union. Consequently, when implementing the new Basel requirements in the two securitisation regulations recently issued by the EU Commission care should be taken to ensure that specialised lending exposures are not subject to the rules for securitisations.

We understand that the current proposal of the European Commission's "Securitisation Regulation" has not adopted the more detailed definition by the Basel Committee that we mentioned above. What is more, it has taken over Recital 50 of the CRR in Recital 6 of the "Securitisation Regulation". In our opinion, in order to avoid ambiguities the definition of securitisation in the "Securitisation Regulation" (Article 2(1) of the draft) should clarify in line with Recital 50 of the CRR that exposures that create a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.

## Proportionality

13. ***Should the provisions contained in the CRR allow for more differentiation in how they are applied to banks of different sizes or with different risk-profiles? How can they do this without compromising the objective of achieving financial stability and creating a level playing field within the single banking market? Are there any provisions that could potentially be applied with greater differentiation? If so, what are these provisions? Provided application on a differentiated basis is desirable, what considerations could be relevant to make such a differentiated application? Are any concrete changes desirable in this context? If so, what are these changes and the associated costs and benefits?***

Yes, for all institutions, the after-crisis regulatory framework is operationally very burdensome. Still, this especially holds true for smaller institutions.

It is therefore of utmost importance that the principle of proportionality is consistently taken account of in any piece of legislation. There should be further work done to make this principle operational in the Level I-legislation as well as in the work of the European Supervisory Authorities (ESAs). One possible option to be further analyzed could be a differentiation which takes the capital level (risk weight based solvency ratio) of institutions as a starting point.

Yes, a way of differentiation could be to allow institutions to be exempted from certain operationally burdensome requirements, like reporting frequency and extent of numbers to be reported or breadth of Pillar III-disclosure. See also Q14.

Yes, reporting frequency and extent of numbers to be reported or breadth of Pillar III-disclosure.

Reducing breadth and frequency of Pillar I and Pillar III-reporting would reduce the operational burdens of banks, reducing their cost base and by this improving (further) their capital base.

At the same time the precision of monitoring and its frequency of these banks would be reduced, raising the risks of overlooking problems at these banks. But these risks could be mitigated for example allowing certain changes only for very well capitalized banks.

## Scope for simplification

14. ***Which areas of the CRR could be simplified without compromising the Regulation's objective of ensuring prudence, legal certainty and a level playing field? Are there areas that could be simplified, but only for specific types of bank or business models? Would it be useful to consider an approach where banks that are capitalised well above minimum requirements or that are less exposed to certain risks could be subject to simplified obligations? What would be the risks with such an approach?***

*For example:*

*(Prudent) valuation*
Acceptance of the IFRS balance sheet and national GAAP balance sheet as the benchmark for measuring assets and liabilities. If regulatory adjustments are considered necessary, this should be taken into account in prudential risk measurement under pillar 1 (capital charges).
Impairment and expected loss
Prudential supervision and accounting should remain separate spheres; prudential supervisors should not interpret the accounting definition of "impairment".

*IFRS 9 – Classification/measurement*
With regard to the discussion on unrealised gains/losses from fair value items and the new IFRS 9 (Classification/measurement), it should make no difference from a regulatory standpoint whether a change in value is reflected in a bank's equity via profit or loss or via OCI. We call in this context for adoption of Basel III's original idea of abolishing such filters.

*Forbearance*
The prudential reporting requirements under FINREP should be based in principle on the accounting definition and approach. In particular, alignment of accounting and prudential requirements should be sought for classification as non-performing exposures.

*Scope of consolidation*
We accept the the different objectives of accounting and prudential requirements, which justify different scopes of consolidation. However, case-by-case examination of whether effort and gain in insight are properly balanced, e.g. FINREP: use accounting scope of consolidation, no proportional consolidation, Country-by-Country reporting: use accounting scope of consolidation.

*Legal opinion obligation under Art. 194*
The obligation under Art. 194 (1) subpara. 2 CRR to obtain legal opinions on the validity and enforceability of credit protection arrangements needs to be reviewed and at least restricted to certain types of arrangements only:

To obtain legal opinions on all types of arrangements used by institutions results in unsurmountable practical challenges and unreasonable burdens. This holds particularly true with regard to guarantees, letters of credit (widely used in financing trade with medium-sized enterprises) and similar instruments, which provide for direct claims against another party. The focus here is less on the validity and enforceability as such and rather on the credit worthiness of the party in question. Institutions also have a longstanding experience with these instruments and the legal risks involved. Guarantees, letters of credit and similar instruments also differ significantly from other types of collateral arrangements where the securing party posts assets as collateral and which may be subject to additional formal/legal requirements (such as perfection registration etc.) or require additional legal analysis (i.e. regarding the local law governing the assets etc.).

Legal opinions are, of course, a useful instrument in relation to contractual arrangements, which may be subject to particular legal risks. However, even in this context they are only one element within the general procedures and measures to address the legal risks involved. The need to obtain legal opinions should therefore be restricted, ideally on a risk sensitive nature, and incorporated as an optional element in the general risk management procedures regarding legal risks. At the very least it should be considered to limit the obligation to certain types of credit protection arrangements, namely credit protection arrangements involving the posting of assets as collateral and classifying as funded credit protection arrangements within the meaning of the CRR.

Yes, simplified obligations for well capitalized banks could be useful and workable as one possible option to be further analysed. What could be considered may be simplified obligations regarding disclosure or supervisory reporting.

The precision of monitoring and its frequency of these banks would be reduced, raising the risks of overlooking problems at these banks.

But these risks are more than mitigated by the fact that these changes would be only done for very well capitalized banks which makes them very save and justifies softer monitoring.

## **Single rulebook**

15. ***What additional measures could be taken in the area of prudential regulation to further promote integration and enhance a level playing field? Can you indicate specific examples and evidence of discretions that affect the cost and availability of bank lending?***

Prefer to our remarks on buffers (Question 4) – "level playing field"
We generally support the idea of a „level playing field" for all regulation of financial institutions. European regulation should set standards that cannot be circumvented by national implementation which is beyond the scope of the CRR.

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An example where European regulation has been circumvented is the issue of deferred tax assets (DTA). Some member states have changed their tax law to allow DTA to be recognized in CET 1 for banks in their country. This not only unlevels the playing field, but also leads to more dependencies between banks and their home country which should be avoided.