

ABI Position on the EC proposal of Directive amending the CRD

The Italian Banking Association (ABI) welcomes the EC proposal of Directive amending the CRD because it acknowledges all the proposals we put forward in our position response to the EC consultation on the supervisory arrangements.

The EC proposal provides indeed sound governance for the functioning of the CoSs and a clear framework for the cooperation with monetary authorities, as requested by the FSF. The EC proposal is therefore able to reduce compliance costs for cross-border banking groups and to trigger a prompt reaction in case of crisis.

However, there two additional points related to the supervisory arrangements that we would bring to the attention of the Commission in order to improve the structure of the EC proposal:

Amendment n. 1 (article 129, paragraph 3). New article 129(3) enables the college of supervisors to apply articles 123 (ICAAP) and 124 (SREP) on consolidated level: this is a very important simplification for cross-border banking groups and it makes more effective the application of the Pillar II requirements. However, the proposal of Directive should make clear that ICAAP and SREP should be applied only on consolidated level; if there is a clear need to apply Pillar II requirements on solo level too, the CoS should be put in the condition to ensure a consistent application.

We fully support the Commission's work to fulfil the request of Article 156 and we are aware of current liability framework; our proposal is simply aimed to ensure that ICAAP and SREP should be applied consistently on consolidated level and on solo level.

- Articles 123 and 124 refer to "sound, effective and complete strategies and processes": if the national supervisory authorities taking part in a college should be able to agree a common approaches on the "sound, effective and complete strategies and processes" to be applied at consolidated level and such approaches "shall be recognised as determinative and applied by the competent authorities in the Member State concerned" (Article 129, paragraph 3), we therefore do not see the reason why the abovementioned approaches cannot be follow on solo level as well.

We would like to remind the Commission services that a common supervisory approach on solo and on consolidated level is a very important simplification that would greatly reduce compliance costs for cross-border banking groups (and for their customers) and, on the other hand it makes more effective the application of the Pillar II requirements.

- Amendment n. 2 (article 131a). The EC proposal requires CEBS to issue guidelines for the operational functioning of CoSs. In order to ensure a level playing field and to develop consistent supervisory approaches across colleges, the consolidating supervisor should be oblige to "comply or explain" in case of any substantial deviation from the CEBS guidelines.

We fully understand that "colleges of supervisors" do not take any decisions, nor do colleges apply guidelines because they do not have legal personality: for this reason

we proposed “the consolidating supervisor” to “consider such guidelines, and explain any significant deviation there from”.

We believe that it is sufficient a declaration by the consolidating supervisor as chair of the college but, in order to comply with your comment on the implications on the current balance of powers between home and host Member States, we think that it is enough to extend the obligation to “explain any significant deviation” to the national supervisory authorities taking part in a college, perhaps by means of a joint declaration. As all the authorities are able to express a common view on the application of the CEBS’ guidelines on the operational functioning of colleges (Article 131a, paragraph 2 states that they should sign written arrangements on this), all the authorities should therefore be able to explain why such written arrangements deviate from CEBS’ guidelines.

- We continue to argue that a consistent application of the CEBS’ guidelines for the operational functioning of colleges of supervisors is crucial to ensure a level playing field and to develop consistent supervisory approaches; in other words, we are concerned that any competitive distortion for cross-border banking groups could arise from the “nationality” and from the “supervisory culture” of the consolidating supervisor and of other key supervisor.
- Finally, we note that the obligation to “explain any significant deviation” from CEBS’ guidelines have been already required by Commission services in Article 129(3) and, therefore, our proposal might not have any exceptional impact on the legal framework of the proposal of Directive.