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European Commission's request for an overview of possible errors and inconsistencies in Regulation (EU) No 575/2013 (CRR) and Directive 2013/36/EU (CRD) observed via the Single Rulebook Q&A tool

Dear Mr Merlin, *Cher Martin*

I am writing to you with regard to European Commission's request for an overview of possible errors and inconsistencies in the CRR/CRD observed via the Single Rulebook Q&A tool - as per European Commission's letter of 22 March (received 31 March) - and am pleased to provide you herewith with the findings of the review that the EBA could carry out in accordance with the terms of our response from 11 May 2016, ref: EBA/2016/D/697.

We focused our review on those areas of the CRR/CRD which are expected to be subject to legislative considerations by end of 2016. As part of this exercise, and in accordance with the Commission's request, we have identified

- i) possible *errors* in the way certain aspects of the CRR or CRD are articulated;
- ii) potential *inconsistencies* which may have unintended consequences in the application or legal interpretation of the text. In addition we took this opportunity to highlight
- iii) *fundamental issues* in relation to the Level 1 texts - other than errors or inconsistencies - that raise more substantial concerns, as evidenced by the discussions in the context of the Q&A process, or by observations and experiences of the supervisory community and/or stakeholders during the first 3 years since the implementation of the legislative framework;
- iv) *other* Q&As, listed for your benefit, pointing to situations where the meaning or the application of a provision would need to be clarified, while not being considered to be raising fundamental issues.

All in all it can be observed that, after 3 years of implementation, there are very few errors or inconsistencies identified by supervisors and practitioners that prompted a question in the Single Rule Book Q&A tool – only about ten cases out of around 300 questions considered. Another 25 issues raised via the tool would now deserve attention in view of changes to be introduced in the CRR-CRD. Significantly, the rest of the Q&As, i.e. around 90% of the questions, seems to reflect the usual implementation issues that competent authorities encounter in their day-to-day supervision, where the interactive tool is providing its full role.

While the review highlights the provisions to be considered as part of the CRR-CRD review it does not propose detailed recommendations as to how exactly any possible or necessary changes to the legislative texts would have to be followed-up, even if the answer published provides in essence the content regarding the way forward as agreed by the supervisory community.

In our review we have scrutinised issues of consistent and effective application of the regulatory framework (category 2), as well as issues that go beyond, i.e. issues of legal interpretation (category 1), which are answered by a Directorate-General of the Commission. We also take this opportunity to highlight the need to address, as part of the CRR-CRD review, any outstanding interpretation issues in the hands of the EU Commission. These 'legacy' issues will then be removed from the tool with reference to the upcoming CRR-CRD review.

I am pleased to therefore attach the report emanating from such review, with the relevant annexes, for which EBA staff stands ready to discuss these matters further.

Finally, I also take this opportunity to recall that, in the more general context of the CRR review, we would appreciate receiving your feedback on the Commission's intention to factor into the ongoing CRR review technical advices previously delivered by the EBA, as pointed out in the above referred letter dated 11 May 2016.

Yours sincerely

A handwritten signature in black ink, appearing to read 'IVE', is placed below the 'Yours sincerely' text.

Isabelle Vaillant
Director Regulations

CC: Dominique Thienpont, DG FISMA, Legal Counselor to Director D
Klaus Wiedner, DG FISMA, Head of Unit D1
Kai Spitzer, DG FISMA, Deputy Head of Unit D1
Valeria Miceli, DG FISMA

Encl: Appendix (with twelve separate annexes covering the different areas reviewed)

Appendix - Coverage and findings of the EBA Q&A review

Objectives and classification:

1. The objectives of the Q&A review were to identify errors, inconsistencies and issues from the Level 1 texts as per the following classification:
 - possible errors in the way certain aspects of the CRR or CRD are articulated;
 - potential inconsistencies (e.g. due to incongruent references across provisions) which may have unintended consequences in the application or legal interpretation of the text;
 - fundamental issues that raise more substantial concerns, as evidenced by the discussions in the context of the Q&A process or by observations and experiences with regard to Q&As as a result of exchanges with NCAs and/or stakeholders; many of these are still outstanding.

Coverage:

2. The review covered all final Q&As relating to most areas of the CRD and CRR. Areas that have been covered in this stage of the review include the following (and Q&As have been grouped in separate files by topic):

CRD:

- Country-by-country reporting,
- Governance and Remuneration,
- Pillar 2 and buffers,
- Other issues

CRR:

- Own funds,
- Market risk, including trading book, counterparty credit risk¹ and CCPs,
- Operational risk,
- Liquidity risk (including Delegated Act),
- Leverage ratio (including Delegated Act),
- Large exposures,
- Disclosures.
- Other issues

3. Other areas (including credit risk, securitisation and other areas still under review or consultation) would be covered in a second round, presumably in 2017, in accordance with the phased approach retained by the Commission.

¹ IMM-related Q&As have been included in the report for completeness, as there are some interactions with the SA-CCR, which is currently under review, and since it is not certain that the existing SA methods will be deleted. Q&As on CVAs on the other hand are not part of the scope, to the extent that this areas is currently still under consultation at the level of the Basel Committee.

4. The review covers Q&As on delegated acts, delegated regulations (RTS and ITS) or guidelines developed by the EBA. In many instances the review of Q&As related to these deliverables revealed that these are not relevant for the CRR-CRD review – which is reflected in their classification as ‘Other’.
5. Colour coding has been used in the attachments to facilitate visual identification of the Q&As falling into one of the three classifications under point 1 (above): **Error** / **inconsistency** / **fundamental issue** / **Other**. Q&As related to transitional arrangements have also been included and highlighted, except where they are not deemed relevant anymore (i.e. where the transition period is due to elapse before the revised CRR/CRD are expected to be adopted).
6. An overview of the number of Q&As covered, by topic, is included in the table below:

CRD

Topic*	Q&As	of which interpretation issues **
Country-by-country reporting	6	5
Remuneration / Governance	16	1
Pillar 2 and buffer related issues	4	3
Other topics	8	5
Total Q&As reviewed	34	14

* Q&As on transitional arrangements - where relevant - are included in the CRD topic file they relate to.

** So-called category 1 Q&As referred to in the cover letter.

CRR

Topic*	Q&As	of which interpretation issues **
Part Two - Own funds	83	18
Part Three - Market Risk (incl CCR and CCP)	45	10
Part Three - Operational risk	3	2
Part Four - Large exposures	21	4
Part Six - Liquidity	68	15
Part Seven – Leverage ratio	11	2
Part Eight – Disclosures	6	-
Other topics	20	10
Total Q&As reviewed	257	61

* Q&As on transitional arrangements - where relevant - are including in the CRR topic file they relate to.

** So-called category 1 Q&As referred to in the cover letter.

Findings:

General findings

7. An overview of the number of Q&As falling into the categories under point 1, grouped by Level 1 text and therein by topics, is included in the tables below:

CRD

Topic	Q&As	Errors	Inconsist.	Fundamental	Other
Country-by-country reporting	6	-	-	-	6
Remuneration / Governance	16	-	1	-	15
Pillar 2 and buffer-related issues	4	-	-	-	4
Other topics	8	-	-	-	8
Total Q&As reviewed	34	-	1	-	33

CRR

Topic	Q&As	Errors	Inconsist.	Fundamental	Other
Part Two - Own funds	83	-	1	14	68
Part Three - Market Risk (incl CCP)	45	-	1	2	42
Part Three - Operational risk	3	1	-	-	2
Part Four - Large exposures	21	-	2	3	16
Part Six - Liquidity	68	1	-	3	64
Part Seven – Leverage	11	-	1	2	8
Part Eight – Disclosures	6	-	-	-	6
Other topics	20	-	2	3	15
Total Q&As reviewed	257	2	7	27	221

8. The detailed review has been included in the files attached to this note and the Q&As falling under the classification under point 1 have been colour-coded as described in point 5 for easier identification.
9. Some of the general findings to be highlighted include the following:
- The Q&A review did not identify any more than two errors in the Level 1 texts and they relate to the CRR.
 - Seven cases of inconsistencies have been identified in the CRR, one each in areas of Own funds, Market risk, and Leverage, two in the context of Large exposures and Other topics. One additional inconsistency has been identified in the CRD in the area of governance.

While in the CRD no fundamental issue has been identified in relation to final Q&As, in the CRR, most fundamental issues have been identified in the area of Own funds Q&As. Between two and three issues have been identified in the areas of Market risk, Large exposures, Liquidity risk and Leverage ratio. There are no significant issues arising from Level 2 texts, which reveals that this layer of regulation is well fitted for direct application as according to its purpose. For Q&As that are related to Delegated Acts (such as those on LCR and Leverage) the review only identifies a small number of issues, in particular in the context of the Leverage ratio, where a need for a change in the CRR arises. As regards the Q&As related to the Delegated Act on Liquidity it is expected that they will be addressed as part of the impending corrigendum. The Q&As in question have been included and identified for convenience. All in all, the Q&As stemming from Delegated Regulations (TS) and guidelines did not raise concerns other than usual implementation issues.

Specific findings

CRD

- Country by country reporting: The analysis did not identify any errors, inconsistencies or fundamental issue, but did reveal some issues that could or should be clarified in the Level 1 text. Given the proposal to extend this disclosure requirement to multinational enterprises ([see link](#)), the Commission may want to further consider the implications for these CRD requirements.
- Remuneration and Internal governance: The analysis identified one inconsistency issue in relation to Article 91(4)(b) CRD.
- Pillar 2 and buffer related issues: The review did not identify any errors, inconsistencies or fundamental issue, but did reveal some issues that could or should be clarified in the Level 1 text, such as Q&A 2460 on the applicability of Article 116 in case of banking group operating inside and outside of the EU, while the EU operations are under the supervision of one competent authority.
- Other CRD related Q&As: The analysis did not identify any errors, inconsistencies, fundamental issue or other issues to clarify.

CRR

- Part Two – Own Funds: The analysis identified 14 fundamental issues and one possible inconsistency. Some of these issues relate to definitions, others relate to the treatment of share premiums, the possibility to repurchase, cancel or repay own funds items, the eligibility of minority interests and the treatment of market making to name but a few. In some areas it was noted that although no error in the Level 1 text was detected an overall review of the issues raised in the Q&As would be beneficiary (e.g. minority interests).

Further to note that there are a significant number of transitional issues which are presumably irrelevant at the time the revised CRR enters into effect but which should be considered when drafting e.g. new grandfathering rules.

- Part Three – Market Risk (including CCP): The analysis identified two fundamental issues which should be clarified in the revised CRR: one is raising the issue of the status of CCPs under the CRR, the other relates to potential future exposure add-ons for written options. In addition a possible inconsistency and a number of other varied but less significant issues identified could or should be clarified in the Level 1 text.

IMM-related Q&As have been included in the report for completeness, as there are interactions with the SA-CCR, which is currently under review, and since it is not certain that the existing SA methods will be deleted. It is noteworthy in this context that the upcoming reports that the EBA is in the process of preparing in response to the relevant Calls for Advice – here CCR and FRTB – will further develop (where relevant) on issues identified as part of the Q&A review. To note that Q&As on prudent valuation are covered under ‘CRR - Other topics’.

- Part Three – Operational Risk: The analysis identified one error (already to be corrected per corrigendum).
- Part Four - Large exposures: The analysis identified three fundamental and two inconsistency issues. Among the fundamental issues a definition of ‘unregulated financial entity’ seems important. Inconsistency issues relate to the criteria for reducing the value of an exposure secured by commercial immovable property, and the treatment of exposures fully excluded from own funds.
- Part Six - Liquidity risk. Three fundamental issues have been identified, one of which is related to the definition of the perimeter of consolidation, one to the reporting of significant currencies and one to the reporting on Stable Funding. One error has been identified in relation to Article 415 (2) of the CRR.

Many additional details were already specified in the LCR Delegated Act (DA). In addition the corrigendum of the LCR DA, which is foreseen for after the summer, is expected to clarify several issues related to the current DA. Hence the focus here is limited to issues where it would make sense to update the CRR, and not the DA. Many of these latter issues are definition issues, stemming from Q&As assigned as Category 1 Q&As. In addition a number of other issues identified in Q&As could or should be clarified in the Level 1 text.

- Part Seven - Leverage ratio: The analysis identified two fundamental and one (possible) inconsistency issue. Fundamental issues include the applicability of the concept of significant risk transfer for the computation of the leverage ratio for securitisations and the treatment of regular way securities transactions. The analysis also revealed that some of the final Q&As probably have become irrelevant due to the envisaged DA on Leverage ratio (September 2016). Moreover one issue could or should be clarified in the Level 1 text.
- Part Eight – Disclosures by institutions: The analysis did not identify any errors, inconsistencies or fundamental issue, but did reveal some issues that could or should be clarified in the Level 1 text.
- Other topics: The analysis identified a number of fundamental issues in relation to definitions under Article 4 (1) of the CRR. The analysis also identified two inconsistency issues (one in relation to Article 11 (5) of the CRR, and one in relation to the offset of additional value adjustments against expected losses. A few other issues were identified via Q&As which could or should be clarified.

Outstanding Category 1 Q&As

10. It is considered that all the around 70 outstanding issues that go beyond consistent and effective application of the regulatory framework, analysed as issues of legal interpretation and as such dealt with by the EU Commission, are substantial in nature and have to be addressed in the review of the CRR and CRD for the areas concerned. It is consequently suggested that these 'legacy' interpretation issues are eventually removed from the tool.