

High-level response of the Federal Financial Supervisory Authority (BaFin), the Federal Ministry of Finance and the Deutsche Bundesbank on the European Commission's targeted consultation document "Assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI)"

Introduction

The significance of the NBFI sector for the financial system and the real economy in Europe has increased over the past decade. Work is ongoing globally (in particular at the FSB, BCBS and IOSCO) and at the EU level (e.g. the most recent AIFMD review) on the framework conditions for this important sector. We therefore welcome the European Commission's consultation on assessing the adequacy of macroprudential policies for NBFI.

We generally agree with the European Commission's risk assessment of NBFI in the consultation paper with respect to both the key vulnerabilities and the systemic risks. Other than that, there are a number of important questions of a more technical nature. We are submitting this high-level opinion to share our key assessments and concerns.

We understand macroprudential policies as meaning policies that are intended to mitigate systemic risks and to strengthen the resilience of the financial system, thereby counteracting any threat to financial stability. They are generally preventive in nature. For each policy or tool, there must be a positive definition of which NBFI entity or activity is meant and which objective the tool is intended to achieve. Risks can be addressed via abstract/general regulatory requirements and/or measures at supervisory authorities' discretion for an entire sector or for multiple or individual cases.

The design of policies (regulation and supervision) should be governed by the basic approach of "same business, same risks, same rules". This guiding principle should be understood in terms of its economic impact, not formal aspects. An adequate macroprudential framework for NBFI serves the purposes of financial market regulation and also plays a part in promoting the capital markets union.

For a detailed assessment of NBFI risks in the German financial sector, reference is made to the risk assessments presented in the Deutsche Bundesbank's Financial Stability Review, the Annual Report of the German

Financial Stability Committee (*Ausschuss für Finanzstabilität*) and the Risks in BaFin's Focus report.

EU commitment to globally consistent NBFi approaches

In a highly interconnected global financial system, it is crucially important for NBFi approaches to be globally consistent. The EU should strongly advocate for this and implement recommendations previously agreed by the FSB in a timely manner. The EU approach should be based on the global work of the FSB and standard-setters and, owing to the market structures, it should also, as far as possible, incorporate NBFi activities in key non-EU jurisdictions, notably the United Kingdom and the United States. Priority topics are the uniform definition of metrics and mutual data availability. Authorities and central banks within the EU at all levels should be able to share NBFi data, above all with authorities and central banks, particularly those from the United Kingdom and the United States.

Both the existing regulatory framework and the regulatory framework that is currently still being implemented are largely sufficient and adequate.

The EU has made significant progress in recent years concerning NBFi regulation and NBFi-related tools. As the consultation paper correctly points out, existing abstract/general regulations already address specific NBFi risks at the EU level. Examples provided in the consultation paper include:

- the Money Market Fund Regulation;
- the most recent AIFMD review;
- the macroprudential toolkit included in the Solvency II review;
- the regulation of derivatives, including commodity derivatives;
- the regulation of CCPs;
- the regulation of securities financing transactions;
- the regulation of securitisation.

Examples for Germany include the regulation of real estate funds and the avoidance of CNAV funds. All these regulations are effective and adequate in principle.

Focus should therefore be placed on implementing the regulations in a full and timely manner with a view to achieving supervisory convergence. This primarily concerns the LMTs for funds. Additional supervisory activities should always be risk-oriented.

Should the effectiveness and adequacy of the existing regulation appear to be limited for certain aspects, the gaps identified should first be evaluated based on the evidence and then closed in a targeted manner if necessary. One example is lending and staking in the crypto space, neither of which are directly covered by MiCAR.

In light of the assessment of NBFi risks in the German financial sector, both the existing regulatory framework and the regulatory framework that is currently still being implemented are largely sufficient and adequate. In keeping with the principle of "same risks, same rules", it should be possible for existing macroprudential tools to also be applied to NBFi as activity-based measures, irrespective of any entity-based measures.

The collection of data and the sharing of data as required should be strengthened in a targeted manner.

We want to strengthen the collection of data and the sharing of data as required in a targeted manner. Additional data should be collected in areas – but only in those areas – where there are still material gaps that have a bearing on the risk assessment. To this end, the data gaps must be identified and then closed in a targeted and efficient manner. This means precisely defining the areas concerned and, first and foremost, using existing data. Cases of double reporting should be identified and avoided.

We advocate facilitating an efficient cross-border exchange of statistical and regulatory data related to NBFIs between European and national supervisory authorities and with central banks. The sharing of data must be geared to the respective legal mandates of the data users, not to the original purpose for which the data were collected, and it must take into account questions surrounding data protection, efficiency/complexity and any possible duplication of work. ESRB access to data of European and national supervisory authorities and central banks needs to be justified in accordance with the aforementioned criteria.

Cross-sectoral EU top-down stress test

We are an open-minded participant in the talks on implementing an EU-wide, cross-sectoral top-down stress test to assess the resilience of the financial system in the European Union, which would complement existing national stress test approaches. Concerning implementation, it would be important to formulate the objectives of such a stress test so as to ensure that the ratio of costs to benefits is appropriate. Existing data should be used as far as possible to minimise the workload for stakeholder institutions as well as for financial intermediaries. Furthermore, the roles and responsibilities of the respective European and national institutions need to be clearly delineated in a manner that respects each institution's mandate when the stress test is implemented.

EU-wide coordination and supervisory convergence

Meaningful mechanisms for EU-wide coordination and supervisory convergence already exist within the European Supervisory Authorities, and these should be put to effective use. Examples of this include the interplay between national supervisory authorities and ESMA with joint supervisory measures, coordinated frameworks, colleges of supervisors, joint groups and joint activities.

We look favourably upon proposals for greater coordination in cross-border supervisory arrangements. Moreover, it remains important to strengthen supervisory convergence in the single market. In particular, coordination mechanisms between national supervisory authorities and the EU level should not cause any losses of efficiency. Governance at the EU level must likewise function in a lean and effective manner. National supervisory authorities should remain responsible for, and have the final say on, macroprudential NBFIs tools. We support an enhanced coordination mechanism that fulfils all these criteria.