

EBA proportionality workshop

Opening remarks by Andrea Enria, Chairperson of the EBA

London 22 October 2013

Ladies and Gentlemen, dear Colleagues,

I would like to welcome you today to the EBA's proportionality workshop. It is a great pleasure to host this event and it speaks for itself that we had to close registrations only two days after announcing the event on our website. It shows the importance that the industry but also public bodies attribute to making rules effective, but targeted and leaving sufficient space to avoid stifling innovation and enterprise. This is the challenge that Europe as a whole faces today and it is a challenge that we have to deal with on a daily basis.

So let me start by describing our role in a bit more detail. We are clearly restricted in our mandate to deliver what policy makers have tasked us with. But we are also given increasing freedom to apply proportionality in drafting our technical standards. And we have done so in various guises already. But let me explain to you how we interpret proportionality at the EBA.

I often hear stakeholders asking us to carve them out completely from the single rule book, leaving it to national authorities to deal with them. They tell us that, because they are not systemically important and because on a national level they are dealt with adequately, we do not need to worry about them. This is a potentially misleading argument – we are not in the business of carving up the European space into those that should operate in a single market and those that should continue to abide by a purely national rule book. We have to acknowledge that a two-tier regulatory system is indeed an option which has been chosen in other jurisdictions – most prominently in the US. However, this is not the solution adopted by the co-legislators in the EU, who were afraid such a solution would create an unlevel playing field and regulatory loopholes. Indeed, the financial crisis has taught us that all financial actors are interlinked, no matter how small or big, and that significant spillovers throughout the Single Market can also arise from relatively simple, local, brick and mortar banks, especially when they steer away from their traditional areas of business. So proportionality for us is not about the single rulebook vs. national rulebooks. It is about giving space to smaller institutions, to institutions with certain business models, to institutions with specific risk profiles, to apply given European standards in a way that gives them some relief from those requirements that would present a heavy drag on their resources and that may stifle their ability to continue or grow their business.

I would like to give a few examples, if I may, where we have clearly embedded proportionality in our rule making already. In the case of the first set of technical standards on own funds that we delivered to the Commission in the summer of this year, the EBA proposed a proportionate treatment in the case of indirect holdings through the introduction of a materiality exemption threshold to allow the use of the structure-based approach instead of the default look-through approach, in case the exposure is below the threshold. The second set of technical standards on own funds, delivered at the same time as the first set, differentiated on the basis of business models and applied specific requirements to cooperative banks. This set of technical standards were drafted with the specific features of the European cooperative banking sector in mind (to be understood as comprising mutuals, cooperative societies, savings institutions or similar institutions) and addresses these specificities through *ad hoc* provisions in these technical standards.

Last but not least, in the case of supervisory reporting, some requirements will only apply to a subset of banks that apply internal modelling approaches to determine their own funds requirements. Similarly, these standards allow for certain data points not to be reported by all institutions but only by those institutions which have significant risk exposures or significant activities in the specified areas. I am of course fully aware that these areas will be covered during the workshop today, but I wanted to illustrate the efforts we have made internally to accommodate and incorporate the important principle of proportionality in our technical standards. In equal measure, I want to remind participants that we cannot go beyond our mandate either. Our role is not, and cannot be, to re-engineer what Level 1 mandates. Our mandate is a technical one and an unpopular decision taken at Level 1 cannot be rectified anywhere else but at Level 1.

The second key message I want to convey today is the need for pragmatism. It is often very easily said that technical rules are too burdensome or lack any proportionality rigour. But translating proportionality into technical standards is not always an easy process. This is especially true when the standards are intended to capture the specificities of different business models. For instance, we are undertaking a major effort to gauge the potential impact, and the possible undesired consequences, of the new liquidity standards on different business models – a topic we will discuss in an open hearing tomorrow. But the classification of business models is not amenable to a very scientific treatment. Most importantly, business models are in a process of continuous change, as we are no longer living in a world where legislation itself defines stringent boundaries of permissible activities for each type of credit institutions. The very objective of the regulatory reforms is to drive significant changes in business models; at the same time, we are very much aware that banks will react to the new standards in way that we can hardly predict. This notwithstanding, we need to draft proportionality in a way that is sufficiently precise, to avoid opening the door for regulatory arbitrage and creating loopholes that some may seek to exploit. Everyone that calls for more proportionate rule making needs to be mindful of that. And this is what I mean by pragmatism – provide us indications that correctly capture differences in business models, help us avoid loopholes in definitions, make suggestions that are sensitive to these concerns, and we will have an open door for your ideas.

This brings me to my third key message, the need to be open and honest with each other. The reason we are hosting this workshop is because all too often we have heard backhand comments about us not taking proportionality seriously enough. I am genuinely convinced that that is not the case, but I want to hear your arguments and understand whether anything needs to be changed in our approach

to proportionality. This workshop is meant as a door opener, bringing together key industry stakeholders, representatives from national supervisory authorities, and EBA staff. Let us make the most of coming together today and continue the dialogue over the coming months and years. Let us work together more closely in the future and share ideas about how to make rules in the interest of all stakeholders. Share your thoughts if you feel we are not according an issue the weight it deserves. We are not beyond reproach or beyond criticism and welcome constructive dialogue with all interested parties.

Let me finally also remind you that we operate within the EU legal system, in which the principle of proportionality is central¹. We are not free to define the application of proportionality as we please. Any proposals of ours claimed in the name of proportionality need to be backed up by evidence and thorough assessment of the potential impact. This is where your input becomes crucial in helping achieving a single rulebook that is not monolithic, nor oblivious to particularities relating to the different business models, sizes or nature of institutions around Europe.

As proportionality is not simply a matter of granting national discretions – which in any case would not be possible at the level of EBA standards –, we need good and solid evidence to differentiate the regulatory treatment of institutions. The active involvement of stakeholders in providing the EBA with such evidence is essential at all stages of the decision making process. In the absence of quantitative evidence, we would appreciate the provision of qualitative assessments or appropriate arguments to justify concrete proposals. The statement that the legislative text would impose unnecessary burden on small banks is not enough.

In that spirit, let me conclude my opening remarks. I hope you can enjoy a productive day which will lead to useful discussions. Let us be open and frank in our panel debates, but let us always be pragmatic. We want to have some concrete take-aways from this workshop. It is in the EBA's interest to get your input and to make something of it. In the end, the buck stops with us and if we deliver technical standards that stifle innovation, that are burdensome without delivering on the objectives of making the financial system safer, it is our responsibility.

But I would plead with you to be realistic about our role – if you disagree with measures taken at Level 1, we are not the right addressees for your complaints. And if you do not agree with the basic premise that a single European market needs single European rule book, we cannot realistically come to a common view. But let us engage in this discussion openly, let us confront our disagreements face on, and above all let us engage in stimulating discussions.

Many thanks

¹ Illustrated by both legislative texts and the judicial recognition of the principle:

See Article 5 of the Treaty, and Protocol No 2 on the application of the principles of subsidiarity and proportionality and more particular article 5 thereof, in relation to the development of (legislative) acts. (In the case of EBA we draft non-legislative acts, but the application of these rules is analogous).

This principle was also first recognised by the European Court of Justice in its case C8/55 *Federation Charbonniere de Belgique v High Authority* and has since become a general principle of EU law.