



February 16, 2022

## **Banking supervision – aligning EU rules on capital requirements to international standards (“Banking Package”)**

### **Proposal for a regulation amending Regulation (EU) No 575/2013**

## **Positions of the Association of Foreign Banks in Germany**

The Association of Foreign Banks in Germany welcomes the opportunity to provide comments on the EU Commission’s recent Banking Package.

Our Association represents over 200 German subsidiaries and/or branches of internationally active banks, investment firms and asset managers, including the biggest banking groups worldwide as well as smaller ones. Likewise, our members’ local German subsidiaries or branches encompass all size classes and forms of incorporation: Some are large EU IPU’s, some are medium-sized or small, and they operate as subsidiaries, EU branches or third country branches. As a consequence, our focus as an Association lies in lobbying for fair market access and operating conditions regardless of the business model, size or form of establishment.

Our comments on the planned regulation amending the CRR focus on the definition of small and non-complex institutions in Art. 4 (1) point (145) CRR. Our suggestion is the following:

Art. 4 (1) point (145) CRR should be amended as to include a *de minimis* threshold. Institutions with a balance sheet total of under € 750 million should be able to obtain the status as small and non-complex regardless of whether the criterion (f) is met, according to which more than 75 % of both the institution's consolidated total assets and liabilities, excluding in both cases the intragroup exposures, must relate to activities with counterparties located in the European Economic Area.

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Association of international banks,  
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Subsidiaries established in the EU by non-EEA parent undertakings quite frequently conduct business in the area of corporate finance and/or trade finance, accompanying non-bank enterprises domiciled in their home

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countries when doing business in the EU. This leads to situations where a sizeable part of the EU subsidiary's balance sheet can be related to non-EEA counterparties.

This results in a structural bias of Art. 4 (1) point (145) CRR in its current form, leading to EU subsidiaries of non-EEA institutions having difficulties when applying for a status as small and non-complex, only for the reason that their business models includes conducting business with non-EEA enterprises. In addition, the nature of the business generally does not involve complex transactions, but relies on corporate credit, payments and trade finance.

As a consequence, even tiny EU subsidiaries – with less than 750 million Euro of assets or liabilities and less than 50 employees – of foreign non-EEA institutions are presently denied the “small and non-complex” status. This is not objectively justified, because the nature of the business conducted by these subsidiary institutions does not involve complex transactions, but relies on basic banking services like corporate credit, payments and trade finance. In fact we assume that the ruling out of such objectively non-complex institutions could be an unintended consequence of point (f) of Art. 4 (1) (145) CRR. Our enquiries with the German supervisory authorities have shown that some of the concerned subsidiaries are evidently small and non-complex in nature, but the current wording of the CRR blocks any attempt to apply proportionate rules. The current review of CRR represents an opportunity to correct this shortcoming of the present legal text.