EUROPEAN COMMISSION

Brussels 11.7.2013
C(2013) 4309 final

Dear President,

The Commission would like to thank the Poslanecká sněmovna for its Opinion on the Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms {COM(2012) 280}, and apologises for the long delay in replying.

The Commission welcomes the support of the Poslanecká sněmovna for the Commission's proposal which aims to create a common European legal framework for the management and resolution of failing banks and to equip authorities with common and effective powers and tools to deal with banking crises in order to contribute to financial stability, to minimise costs for society and in particular to avoid as far as possible the use of taxpayer's money.

The Commission would like to clarify what the objectives and intentions of the proposed Directive are with regard to certain issues on which the Poslanecká sněmovna raises concerns.

The financial crisis has shown that existing national legislation alone is not suited to adequately addressing problems of cross border banking groups. The proposal thus creates special rules for these types of institutions. Indeed, these rules give a prominent decision making role to the group resolution authority but at the same time ensure, via a number of safeguards, an adequate balance between the interests of both home as well as host authorities who oversee a group's subsidiary institutions. Should disagreements occur, the proposal provides for a mechanism to facilitate agreements between authorities with the help of the European Banking Authority (EBA). According to the Regulation (EU) No 1093/2010, establishing the EBA, its decision is bound to be objective and impartial and shall not impinge on the fiscal responsibilities of a Member State concerned.

Ms Miroslava NĚMCOVÁ
President of the
Poslanecká sněmovna
Sněmovní 4
CZ – 118 26 PRAGUE 1

Furthermore, the proposal aims to overcome current legal restrictions to the provision of financial support from one entity within a group to another. Enabling financial assistance between different members of the cross-border banking group is in the Commission's view an important measure that creates legal certainty by providing for the conditions under which institutions can draw on funds from within its group members. As a safeguard, the supervisor of the transferor has the power to prohibit or restrict financial support pursuant to the agreement when that transfer threatens the liquidity or solvency of the transferor or financial stability. As already mentioned above, the disagreements are mediated by the EBA, whose decisions are subject to the same aforementioned safeguards.

As regards, more specifically, the provisions relating to the European system of financing arrangements, differences in the rules on the contributions to resolution financing arrangements may affect bank funding costs differently across Member States and potentially distort competition between banks. However, the use of the Deposit Guarantee Scheme (DGS) in the context of financing resolution measures is according to the proposal an option and not an obligation. It follows that the provisions on the European system of financing arrangements pursue the internal market objective. By providing a harmonised framework of national recovery and resolution mechanisms with an effective European system of financing arrangements, the proposal introduces a level playing-field in the single market for institutions competing in the financial markets of the Union and for depositors and creditors in the protection of their rights and interests.

The Commission proposal also provides for the use of the DGS in the resolution of a bank to absorb losses in the place of depositors because the resolution serves also the primary objective of DGS, namely protecting covered depositors. If, in resolution, creditors other than covered depositors were to assume the whole burden of losses while, in liquidation, the DGS assumed the part of losses falling on covered depositors, then it would mean that creditors are worse off than in normal insolvency proceedings. An efficient resolution regime is thus beneficial to the DGS because it prevents bank failures and also their contagion to the whole banking sector, which would trigger the need for multiple pay-outs by the DGS.

Overall, the Commission believes that the proposed framework will greatly improve the institutional readiness at EU-level to tackle bank crises, and to overcome the fragmentation of the single market into national zones of bank funding and lending.

The Commission hopes that these explanations clarify the points raised by the Poslanecká sněmovna and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President