



EUROPEAN COMMISSION

*Brussels, 6.8.2013
C(2013) 5189 final*

Dear President,

The Commission would like to thank the Senát 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 final} and apologises for the delay in replying.

The Commission welcomes the support of the Senát to the Commission's proposal, the aim of which is to create a common European legal framework for the management and resolution of failing banks and 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 a number of issues with which the Senát expresses a certain level of doubt or disagreement.

The financial crisis has shown that existing national legislation alone is not suited to adequately deal with 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 number of safeguards, an adequate balance between the interests of both home as well as host authorities who oversee groups' 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. The

*Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

degree and the instances of intervention of EBA as a mediator, is under discussion between the European Parliament and the Council.

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 cross-border banking groups 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 their group members. As a safeguard, the supervisor of the transferor would have 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 would be 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 harmonized 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 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 such 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 payouts by the DGS.

As regards the scope of delegated powers, the Commission agrees with the Sénat that both the bail-in and the borrowing between financing arrangements are key elements of the proposed Directive. In both areas the Commission proposal aims at striking the right balance between legal certainty and a certain degree of flexibility to be framed by means of delegated acts. On 26 June, the Council reworked that balance in the general approach giving wider room to flexibility. In these circumstances it becomes even more important that delegated acts are kept in order to ensure that those provisions are applied by all Member States in a harmonised way.

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.

However, the text proposed by the Commission is under negotiations between the co-legislators, namely the European Parliament and the Council, and it is therefore set to be revised in different instances. The ECON committee voted on the report of Mr Hökmark, a Swedish member of the EPP group, on 20 May, and the Council adopted its general approach on the 26 June. Trilogue negotiations between Parliament, Council and Commission are starting in July 2013, and there is commitment on all sides to reach an agreement before the end of the year.

The Commission hopes that these clarifications address the observations made by the Sendt and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President