EUROPEAN COMMISSION

Brussels, 16.05.2014
C(2014)3091 final

Dear President,

The Commission would like to thank the Senát for its Opinion concerning the Proposal for a Regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council {COM(2013) 520 final}.

The Commission welcomes the general support for its proposal for a Single Resolution Mechanism (SRM) that the Senát expressed in its Opinion.

Please find hereinafter the Commission's statement on the concerns brought up in the Opinion of the Senát.

As rightly pointed out in the Opinion of the Senát, the SRM is an inevitable complement to the Single Supervisory Mechanism (SSM). Supervision and resolution need to be exercised at the same level of authority. Otherwise tensions between the supervisor (ECB) and national resolution authorities may emerge over how to deal with ailing banks, while market expectations about Member States' (in)ability to deal with bank failures on national level could continue, reinforcing feedback loops between sovereigns and banks and fragmentation and competitive distortions across the internal market.

The Commission shares the Senát's view that an agreement on the concrete form of the SRM had to be found quickly. After the European Parliament and the Council, in December of last year, adopted their positions on the Commission's proposal for a Regulation of 10 July 2013, the European Parliament adopted the text politically agreed with the Council in its Plenary session of 15 April 2014. Subject to the Regulation entering into force, the newly established Single Resolution Board would likely start contributing to the work on resolution planning in 2015. Depending on the compliance with the conditions for the transfer of contributions to the Single Resolution Fund, the Single Resolution Board could probably take resolution action from 2016.

The resolution tools and the financing mechanism provided for in the Commission's proposal aim at minimising taxpayer's costs. The Commission appreciates the endorsement of its efforts by the Senát. However, regarding the Senát's doubts as to the proposed role of the Commission, there is established case-law of the European Court of Justice, according to which decisions implying a wide margin of discretion need to be controlled by an EU institution. The Commission would like to refer to the opinion of the Council Legal Service, which has confirmed the relevance of this case-law for the delegation of powers to the Single Resolution Board. Given its executive functions and duty to act in the interest of the Union as

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

a whole, the Commission is the appropriate Union institution for such decisions, which has been confirmed by the political agreement that has given this power largely to the Commission while leaving it to the Council only in certain cases and with regard to specific aspects.

With regard to the concern of the Senát that resolution decisions could impinge on the fiscal sovereignty of Member States, the SRM Regulation would confirm that a resolution decision under the SRM cannot require Member States to provide extraordinary public financial support to banks nor impinge on the budgetary sovereignty and fiscal responsibilities of the Member States.

The Commission assures the Senát that due regard is being given to the interests of non-participating Member States and the stability of their financial systems. In the example presented by the Senát, the resolution of a banking group with subsidiaries in non-participating Member States would be planned and coordinated in resolution colleges provided for under the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms ("Bank Recovery and Resolution Directive"). Under the rules applying to resolution colleges, the resolution of a subsidiary established in a non-participating Member State requires the consent of such Member State.

For Member States participating in the SRM, the distribution of tasks between the plenary and the executive session of the Single Resolution Board as well as the voting modalities applying to these sessions are relevant. A resolution scheme would normally be adopted by the executive session, with each voting member, including those from participating Member States, having one vote and a simple majority sufficient for the adoption of a decision. Particular attention has been paid to ensure that non-participating members would be involved. The Single Resolution Board in its executive session would invite national resolution authorities of non–participating Member States, when deliberating on a group that has subsidiaries or significant branches in those non–participating Member States, to participate at its meetings. In cases that involve the use of the Single Fund above a certain threshold, the adoption of the resolution scheme would lie with the plenary session of the Single Resolution Board. Each voting member, including all participating Member States, would have one vote, and a two-thirds majority representing a certain percentage of contributions to the Single Resolution Fund would be necessary for a decision. The European Parliament took a position more in line with the Commission's original proposal. This issue is still subject to ongoing negotiations between the two co-legislators.

In relation to the Asset Quality Review that is being carried out by the European Central Bank, the Commission fully shares the Senát's conclusions.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these comments addresses the concerns raised by the Senát and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Michel Barnier
Member of the Commission