



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Sénat for its Reasoned Opinion on the Proposal for a regulation on structural measures improving the resilience of EU credit institutions {COM(2014) 43 final}.

The Commission welcomes the support of Sénat for the Commission's objective to strengthen financial stability and financial markets integration.

The proposed Regulation on structural reform measures would complement the financial regulatory reforms undertaken over the last several years by setting out rules on structural changes for the largest banks in Europe, in particular those with significant trading activities. The failure of such banks could have a damaging impact on the rest of the financial system and the whole economy. These measures would affect around 30-35 banks out of the more than 8000 banks operating within the EU.

Uniform rules on banks' structures would enhance financial stability within the Union, better integrate financial markets, facilitate the orderly resolution and recovery of the group, enhance the cross-border provision of services and the establishment in other Member States, reduce distortions of competition and prevent regulatory arbitrage.

Some Member States adopted or pursue the adoption process of structural reform measures for their national banking systems. These reforms share the common objective of addressing the remaining risks associated with the too-big-to-fail ("TBTF") banks by ensuring that all of them can be resolvable and no longer require taxpayer bailouts. Most of these national initiatives also intend to ban or set aside risky trading activities that are of limited added-value for the real economy. The coexistence of inconsistent national legislation that does not pursue the same policy goals would increase the risk that capital movements and investment decisions would be distorted. Without a Union-wide approach banks would be forced to adapt their structure and operation along national boundaries, thereby making them even more complex and increasing fragmentation.

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When designing the measures envisaged by the proposed Regulation, the Commission has considered all existing initiatives on banking structural reform at the Member State level. These initiatives, however, often differ in certain key aspects.

Furthermore, during two rounds of public consultations and in its Impact Assessment combining qualitative and quantitative assessments of the costs and benefits of structural reform to support the qualitative analysis, the Commission has evaluated the overall costs and benefits of the proposed measures.

The Impact Assessment shows that the proposed reform would be complementary to ongoing EU financial reform measures: it would underpin the creation of the Banking Union and it would facilitate the orderly resolution and recovery. It would be the last piece of the package of financial regulatory reform measures proposed by this Commission since the start of the crisis. This package has contained important regulatory reforms, some already adopted by co-legislators (e.g. new capital requirements, resolution rules, supervision by the European Central Bank); others in the process of being finalised (Single Resolution Mechanism)¹.

The Commission agrees that for the vast majority of EU banks, these rules will probably be sufficient to ensure the stability and safety of the sector. However, there are still residual, but very significant, risks arising in particular from the TBTF banks. The EU has some very large and highly interconnected banks where certain additional, structural measures may prove necessary in order to render these banks safer and less complex. This proposal would address these risks by curtailing the artificial expansion of banks' balance sheets, and would facilitate the orderly resolution and recovery of big banks in a crisis situation, while underpinning the creation of the Banking Union.

The proposal would not undermine the competitiveness of the European banking structure nor would it put an end to the universal banking model. This model has proven its advantages in Europe and will continue to exist. Universal banks are indeed an important feature of the European banking landscape and most banks would continue to provide a full range of banking services in a relatively unrestrictive manner. The Commission has assessed the overall costs and benefits of these measures and taken due account of the benefits of maintaining the diversity of banking models in Europe, ensuring that banks could finance sustainable economic growth without creating systemic risks.

As regards the derogation, the proposal envisages granting of the derogation on a case by case basis for individual institutions that would meet the criteria set out in Article 21. This possibility would apply only to the part of the proposal that empowers supervisors to eventually separate certain trading activities from the deposit taking activities. It is proposed that the derogation could only be granted to institutions in those national jurisdictions where separation has already been required by law, and not by a simple supervisory act. Only institutions that are subject to national legislation, achieving equal or greater results could benefit from the derogation.

Regarding the delegated acts, the Commission has respected the provisions of Article 290 of the Treaty of the Functioning of the European Union. The use of level 2 measures is justified because, for example, the specific calibration of the parameters and conditions triggering the separation process needs to be adjusted as market evolves, and it would be difficult to include

¹ see Annex 3 of the Impact Assessment

it in level 1 provisions at this stage. Several decisions would require access to supervisory data; therefore the European Banking Authority would develop and suggest a methodology that the Commission would adopt. These important technical elements could not be included in level 1 legislation at this stage of the Proposal. Nevertheless, the Commission agrees that all the essential elements on which the consecutive level 2 decisions would be based should be set out in the legislative text.

The proposal is now with the European Parliament and Council for consideration. The European Parliament has confirmed its support of the overall approach to the EU action needed in this area in its report adopted on 3 July 2013.

The Commission hopes that these clarifications address the concerns raised by the Sénat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*