



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the proposals for legislative acts regarding {COM(2016) 850 final}; {COM(2016) 851 final}; {COM(2016) 852 final}; {COM(2016) 853 final}; {COM(2016) 854 final}; and {COM(2016) 856 final}.

These proposals form part of a broader package of measures designed to strengthen the Union's prudential and resolution frameworks and two proposals in particular, namely the proposal to amend Regulation (EU) No 575/2013 and the proposal amending Directive 2013/36/EU, aim at implementing the outstanding elements of the post-crisis reforms already agreed at international level, encouraging bank financing to promote growth and jobs, and increasing the proportionality of the current rules.

The Commission welcomes the Senato della Repubblica's support for the continued efforts to strengthen the financial system in the European Union and to maintain financial stability, and takes note of the concerns expressed regarding the proposals.

With respect to minimum requirement for own funds and eligible liabilities as well as the bank recovery and resolution directive, the Commission notes the Senato della Repubblica's agreement that a simultaneous two-pronged approach of measures both to mitigate and to share risk needs to be promoted. The Commission also agrees that risk reduction and risk sharing must proceed in parallel. The completion of the Banking Union requires political agreement not only on the risk reduction measures, but also on the European Deposit Guarantee Scheme and the common backstop to the Single Resolution Fund. On the former, the Commission set out its ideas on the way forward in its October 2017 Communication on completing the Banking Union and, on the latter, the Commission adopted its proposal for the integration of the European Stability Mechanism into the Union framework as the European Monetary Fund with a backstop function. The swift adoption of a number of risk reduction measures, hand in hand with the implementation of the backstop and the introduction of a European Deposit

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Guarantee Scheme, would further reduce the risks posed by banks to Member States and vice versa, allowing the Banking Union to deliver its full potential in reinforcing financial stability and underpinning the single market in banking.

The Commission is pleased that the Senato della Repubblica is supportive of the harmonisation of the bank creditor insolvency hierarchy through the introduction of a new category of senior unsecured debt, which was adopted and published in the Official Journal of the European Union in December 2017.

The Commission notes the concerns expressed by the Senato della Repubblica as regards the proportionate calibration of minimum requirement and eligible liabilities and exercise of discretion by resolution authorities as well as availability of sufficiently long transitional period for banks to comply with minimum requirements of eligible liabilities in order to prevent a negative impact on bank lending capacity. The Commission would like to recall that its proposed amendments are intended to ensure that the proposed minimum requirement of eligible liabilities framework continues to be based on an institution-specific assessment as part of resolution planning process. Additional clarifications are provided in annex.

Regarding the Senato della Repubblica's remarks on the overhaul of the current resolution regime, the Commission regularly takes stock of the experience gathered from the implementation and application of the legal framework and from the input provided by stakeholders in view of possible future reviews. Moreover, the framework provides flexible tools to allow resolution authorities to act effectively in the event of a bank crisis.

With respect to the International Financial Reporting Standards, the Union has recently adopted legislation that will moderate the impact of the new expected credit loss provisioning of financial instruments on banks' capital. The arrangement is applicable since 1 January 2018.

As regards the management of non-performing exposures, the Council in July 2017 adopted an Action Plan to Tackle Non-Performing Loans in Europe. In response to the Action Plan, the Commission announced a comprehensive package aimed at addressing the problem of non-performing loans in its Communication on the Completion of the Banking Union of 11 October 2017. As part of the non-performing loans package adopted by the Commission on 14 March, the Commission presented a non-legislative blueprint, which puts forward practical recommendations for the design and set-up of Asset Management Companies at a national level, building on best practices from past experiences. The aim of this specific initiative is to stimulate the set-up of effective public entities for the management of non-performing exposures.

Furthermore, the non-performing loans package adopted by the Commission on 14 March includes measures to further develop secondary markets for non-performing loans, especially with the aim of removing undue impediments to loan servicing by third parties and the transfer of loans following the ongoing impact assessment. The package also includes measures aimed at enhancing the protection of secured creditors by allowing them more efficient methods to recover their money from secured loans.

Finally, the package introduces statutory prudential backstops for newly originated loans that become non-performing in the form of time-bound prudential deductions from own funds, in order to prevent the build-up and potential under-provisioning of future non-performing loans stocks across Member States and banks.

The Commission values the Senato della Repubblica's early engagement at this stage of the legislative process and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Member of the Commission*

Annex

The Commission would like to provide the following clarifications on the remarks made by the Senato della Repubblica.

As regards the determination of the level of minimum requirement for own funds and eligible liabilities, it was proposed that it does not exceed the level that is necessary (i) to absorb losses, which are assumed to correspond with the level of prudential capital requirements and (ii) to recapitalise the bank to the level that ensures that following a resolution it can comply with its authorisation requirements. Resolution authorities can also issue guidance to ensure that banks maintain a market confidence buffer, which generally should not exceed the level of the combined capital buffer requirement less the counter-cyclical capital buffer requirement.

Discretionary decisions by resolution authorities on the level of minimum requirement for own funds and eligible liabilities are expected to be fully reasoned. The same justification requirement would apply when discretion to require subordination is exercised. In this case, resolution authorities would be expected to demonstrate that subordination is needed to prevent a breach of the so-called no-creditor-worse-off safeguard. As regards transitional periods, it was proposed that they are also determined on the basis of institution-specific assessments of their shortfall to meet the requirement, which should provide for deadlines that are proportionate.

Furthermore, on the Senato della Repubblica's points, the framework provides flexible tools to allow resolution authorities to act effectively in the event of a bank crisis. The Commission is fully aware that banks may differ widely in size or business model, but underlines that the provisions in bank recovery and resolution directive and the Single Resolution Mechanism Regulation allow resolution authorities to adapt their strategy to the type and nature of the bank both in the preparatory phases (i.e. resolution planning) and in the event resolution action is needed.

The complexity of the procedure to adopt resolution measures reflects the importance and impact of such decisions and the need to ensure proper consultation of the relevant actors. While there may be room to further improve the current setting, the procedure has so far been used successfully in recent cases, particularly taking into account the time constraints, the specific sensitivities and the recent adoption of the framework.

Precautionary recapitalisation is an important element of the resolution framework, as it allows the tackling of issues emerging from a stress test in advance and prevention of further deteriorations in the financial situation of a solvent bank. It is at the same time important to verify that the specific conditions contained in the relevant legislative provisions are always complied with, to ensure the consistent application of this tool in line with the overall logic of the framework.

The legislative framework at European Union level does not appear to allow the application of bail-in only to liabilities issued after 1 June 2016, as a grandfathering clause is not provided in the text. At the same time, resolution authorities are equipped

with the same tools that allow them, when this is possible based on the requirements in the legislation, to identify the practical solution that best tackles the issues at hand in a specific case. These include also the possibility to exempt certain liabilities from bail-in where the strict conditions for an ad-hoc exemption are present.