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Chairman
Standing Committee on
Foreign and European Affairs

12th November 2012

H.E. M. Barroso,
President,
European Commission

Scrutiny of Pipeline Acquis

The Standing Committee on Foreign and European Affairs, acting in its scrutiny function, wishes to express its concern with regard to a 'one size fits all' approach that is being adopted with regards to the Proposal for a Directive of the European Parliament and the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No. 1093/2010, published in Brussels, on 06 June 2012 [**COM (2012) 280 final**].

The Committee calls upon the Commission to retain at all times the distinct realities and specificities of the EU member states, in particular small island member states such as Malta, which are faced with particular intrinsic challenges and therefore may carry a disproportionate burden in implementing certain EU legislation and proposals.

Attached is an explanatory note relative to this specific case.

Hon. Francis Zammit Dimech, M.P.
Chairman
Standing Committee on Foreign and European Affairs
House of Representatives
MALTA

Encl.

Proposal for a Directive of the European Parliament and the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No. 1093/2010 [COM (2012) 280 final]

As part of the European Commission's objective to establish a crisis resolution framework for financial institutions, the Bank Recovery and Resolution Directive ("Directive") is currently being proposed to be applicable to all credit institutions and certain types of investment firms.

It is the European Commission's intention to apply the provisions of the Directive in a manner which is proportionate to the risk, size and interconnectedness of the financial institutions. In order to achieve this objective, the European Commission is proposing to apply the principle of proportionality to investment firms by including in the scope of the Directive, only those investment firms that are involved in the provision of dealing on own account or in the underwriting or placing of financial instruments on a firm commitment basis. Whilst this approach provides a certain degree of proportionality, it is not considered as the best approach as not all investment firms that deal on own account or underwrite or place financial instruments on a firm commitment basis, truly present a threat to systemic stability.

On considering the nature, scale and complexity of the investment services business that is undertaken by investment firms licensed in Malta, which are authorised to deal on own account or underwrite or place financial instruments on a firm commitment basis, it is evident that most of these firms are small in size and therefore do not present a risk to systemic stability.

Malta is suggesting that while the European Commission's proposed definition of an investment firm which is limited to those that deal on own account should be retained, a derogation should however be provided to exempt small and medium investment firms from the requirements of the proposed Directive. It is suggested that the granting of the exemption should be at the discretion of the competent authority and subject to the satisfaction of certain criteria which could include the following:

(a) The potential systemic risk posed by the domestic operational business of investment firms;

(b) The level of cross-border business that is carried out;

(c) The extent of leverage undertaken;

(d) The level of their balance sheet total;

(e) The level of their annual turnover;

(f) The number of employees;

(g) The complexity of the instruments that it deals with;

(h) The size of positions in complex financial instruments;

(i) The size of positions in derivatives business; and

(j) The size of their trading book business.

Malta considers that by applying the above-mentioned criteria, the competent authority would be implementing the crisis management framework in a manner which better achieves the main objective of the proposed Directive.