EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Camera Deputatilor for both its opinions on the proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("CRD IV") {COM(2011) 453 final} and apologises for the delay in replying. The Commission takes note of the concerns raised by the Camera Deputatilor both in its reasoned opinion and in the opinion on the substance of the proposal and would like to reply as follows:

Change in the supervisory regime for liquidity risk regarding branches (from host to home)

Currently, there are no harmonised standards for liquidity supervision. The current directive therefore allows Member States to carry out supervision according to national rules. This also applies to a branch of a credit institution from another Member State, however, as the relevant provision states, only "pending further coordination". This shows that separate supervision of branches by host supervisors is not a good solution and should only be upheld as long as no harmonised standard is introduced. In particular, host supervisors can only obtain information limited to the fictive liquidity position of a branch, while the branch as such is not the owner of assets, nor the obligor of claims. Whether a credit institution as a legal entity can or cannot fulfil its obligations can only be assessed from the liquidity reports of the whole credit institution, considering all of its assets and liabilities.

Accordingly, the Commission has proposed harmonising liquidity standards to abolish the obsolete liquidity supervision of branches and to allow the competent authorities of host Member States full access to the liquidity reporting of the whole credit institution. This includes, where relevant, separate reporting about the liquidity of the credit institution in the currency of a significant host country. In short, the Commission proposal would provide host supervisors for the first time with meaningful information about liquidity. At the same time liquidity supervision would be simplified by lifting the separate supervision over the branch that currently monitors assets and liabilities being assigned to the branch in a more or less arbitrary fashion.

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In the interest of effective supervision over credit institutions, the local insight of host authorities would be used in accordance with Article 51(4) of the CRD IV proposal for a Directive. This requires that competent authorities of the home Member State communicate and explain to the competent authorities of the host Member State, upon request, how information and findings provided by the latter authorities have been taken into account. Furthermore, where, following communication of such information and findings, the competent authorities of the host Member State maintain that no appropriate measures have been taken by the competent authorities of the home Member State, the competent authorities of the host Member State may refer the matter to the European Banking Authority (EBA) in accordance with Article 19 of Regulation (EU) No 1093/2010.

In addition, under Article 43(1) of the same proposal, the competent authorities of the host Member State may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 2 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions, take any precautionary measures necessary to protect the collective interests of depositors, investors and clients in the host Member State. Thus, host authorities would be able to intervene in a branch -if required by an emergency- before the home authorities are able to take measures to rectify the situation. This is a clear improvement of the current situation where host authorities' intervention rights are narrowly confined to liquidity supervision.

Finally, under the arrangements ("Pillar 2") required in Article 22 of the current capital requirements directive (Directive 2006/48/EC), there is a separate requirement to hold assets in local currency or deposited locally, including in host Member States, if that is operationally necessary for immediate access to central bank liquidity in emergencies.

Therefore, in the Commission's view, there is no breach of the subsidiarity principle in the case of liquidity standards harmonisation, as all other technical instruments for supervision have already been harmonised.

Waiver of application of liquidity requirements at subsidiary level in the context of group supervision

Generally, liquidity standards apply at the level of individual legal entities and, in addition, at an EU-wide consolidated level. The CRD IV proposal for a Regulation envisages that, under certain prudently defined circumstances, individual supervision of subsidiaries in the area of liquidity should be waived by the competent authorities.

The applicable conditions for waiver proposed under Article 7(1) are demanding and require that mutual financial support commitments be in place between all entities concerned and that the entities be supervised on a sub-group basis ("single liquidity sub-group").

In particular, under Article 7(2), all competent authorities concerned must agree about the allocation of liquid assets and the management of liquidity risk within the single liquidity sub-group. Therefore, competent national authorities cannot be obliged to grant the waiver, if they are not fully satisfied that the waiver is appropriate. The waiver may also be withdrawn when the required conditions are no longer met.

The mandatory exclusion of intra-group exposures from the application of prudential requirements

As regards the Camera Deputatilor's reserve about the mandatory exclusion of intra-group exposures from the application of prudential large exposure limits, the Commission proposal only exempts from the application of large exposure limits those intra-group exposures to those counterparties that are established in the same Member State and that meet further conditions, as detailed below. As regards cross–border intra-group exposures, Member States continue to have discretion regarding the decision of whether to impose or not large exposure limits; however, exemption shall be granted insofar as counterparties are covered by the supervision on a consolidated basis.

In more detail, the proposal for a Regulation (point 1(f) of Article 389) would supplement the rules laid down in the current CRD (point 3(c) of Article 113 of Directive 2006/48) by stipulating that the intra-group exposures incurred by an institution to group entities established in the same member State should be exempted from the application of the large exposure limits insofar as the following conditions are met:

- *a) the group entities are fully included in the same consolidation perimeter as the institution;*
- *b) the group entities would be assigned a 0% risk weight under the standardised approach;*
- *c) the group entities are subject to the same risk evaluation, measurement and control procedures as the institution;*
- *d) the group entities are financial entities subject to prudential requirements;*
- *e) there is no impediment to the prompt transfer of own funds or repayment of liabilities from the group entities to the institution.*

These regulatory provisions are justified by the fact that exposures to third parties from group entities should be regarded as exposures from the whole group, as long as the parent entity is able to exercise control on all entities it is exposed to and there is no potential impediment to fund transfers. Conversely, if the parent entity has control over group entities, those group entities should not be regarded as third parties since the parent and its group entities should be viewed as a single entity in terms of risk governance or internal control.

The Single Rule Book: member states should continue to enjoy flexibility, thus the principle of minimum harmonization should continue to apply

The Commission has proposed four measures allowing for national flexibility within the proposed approach of maximum harmonisation. These measures include a countercyclical capital buffer, real estate risk weights and macro-prudential measures (cf. below). Therefore, the question for the Commission is not whether national flexibility is needed but how that could be best provided. The Commission is open to discussing it in the legislative process, but within the context of an efficient internal market with ex-ante *coordination in order to prevent negative spill-over effects.*

There are four measures or "freedoms" under which binding requirements may be increased by national authorities in the context of maximum harmonisation:

- *a) temporary increases in minimum requirements by Commission delegated act (Regulation, Article 443);*

b) *inclusion of structural variables in the determination of the countercyclical capital buffer rate (Regulation, Articles 126(3)(c) and 126(4));*

c) *application of supervisory (pillar 2) measures to a type of institutions (Directive, Article 95);*

d) *increasing the risk weight for lending based on mortgage-secured immovable property (Regulation, Article 119).*

The relaxation of the requirements for applying prudential supervision instruments at solo level

The elimination of the double counting of capital requirements is in no way watered down by the proposal. Both the currently applicable EU banking legislation and the Commission CRD IV proposals preclude double counting of own funds at the level of the parent and at the level of its subsidiary, either via the mandatory application of consolidation requirements or by deduction. Therefore, the double counting prohibition is not amended in the proposal.

The power delegated to the Commission to establish the final calibration of the liquidity coverage ratio

The Commission has proposed a delegation of power in order to give a clear signal of political commitment to the introduction of the liquidity coverage ratio (LCR). The delegation proposed is narrowly framed and relates to technical, non-essential features of the LCR, while its principles and structure are set out in the present proposal itself. Moreover, the delegation permits maximum use of the observation period for calibration of the LCR, ahead of the internationally agreed implementation date of January 2015. Since the LCR is a new instrument, it is particularly important to ensure correct calibration. Were a second ordinary legislative procedure required for the final calibration of the LCR, then, given the longer procedural requirements, the time available for in-depth analysis and calibration of technical aspects of the new LCR would be severely curtailed.

The Commission hopes that these explanations serve to clarify the concerns raised in the opinions of the Camera Deputatilor and looks forward to continuing the political dialogue on this very important issue.

Yours faithfully,

Maroš Šefčovič
Vice-President