Statement by the Committee on Finance
2011/12:FiU29

Subsidiarity check of proposal for a regulation on prudential requirements for credit institutions and investment firms

Summary

In this statement the Committee examines the Commission's proposal for a regulation on credit institutions and investment firms [1] (COM [2011] 452 final). In the opinion of the Committee, the proposal as it is currently worded is not compatible with the principle of subsidiarity. The Committee therefore proposes that the Riksdag should decide to submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission, in accordance with Chapter 10, Article 6 of the Riksdag Act.

[1] Proposal for a regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms.

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The Committee's proposal for a decision by the Riksdag

Subsidiarity check of proposal for a regulation on credit institutions and investment firms

The Riksdag has decided to submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission with the wording set out in appendix 2.

Stockholm, 13 December 2011.

On behalf of the Committee on Finance

Anna Kinberg Batra

The following members participated in the decision: Anna Kinberg Batra (Mod), Tommy Waidelich (SocDem), Elisabeth Svantesson (Mod), Pia Nilsson (SocDem), Göran Pettersson (Mod), Jörgen Hellman (SocDem), Ann-Charlotte Hammar Johnsson (Mod), Maryam Yazdanfar (SocDem), Carl B Hamilton (Lib), Bo Bernhardsson (SocDem), Per Åsling (Cen), Marie Nordén (SocDem), Staffan Anger (Mod), Per Bolund (Grn), Anders Sellström (ChrDem), Johnny Skalin (SweDem) och Ulla Andersson (Lft).

The position of the Committee

The Committee would first like to stress that it welcomes the Commission's work on regulations in order to create a more stable financial system and considers that the proposal can help bring about financial stability at EU level. Furthermore, the Committee is very positive to the proposal to implement the Basel III agreement in the EU.

On 17 November 2011, the Commission announced that all official language versions of the draft regulation had been submitted to the member states' national parliaments. This marked the start of the eight-week period for the subsidiarity check. In view of the fact that the Commission itself points out that the regulation and directive are to be regarded as a package and emphasises the importance of their being read together, it would, in the opinion of the Committee, have been helpful if the two legislative acts had been sent to the national parliaments at the same time. In the opinion of the Committee, it is unfortunate that both proposals could not be examined for compliance with the principle of subsidiarity at one and the same time. This makes it more difficult to carry out a subsidiarity check of the proposal as a whole.

As regards the proposal as a whole, the Committee considers that the consistent harmonisation proposed by the Commission for various aspects of the proposal is not compliant with the objective of contributing to financial stability at Union level. The risk is that the content of the Basel III agreement may be watered down when such harmonisation is implemented as legislation to apply in the EU, as what were intended to be minimum regulations instead become an enforceable EU standard. The provisions relating to the basic levels for capital requirements (also known as Pillar I requirements [2]) are formulated in the proposal as absolute requirements, which prevents member states from legislating for higher requirements. The same applies, in principle, to the two capital buffers that are to be introduced, according to the proposal. Because they are formulated this way, the provisions have the character of maximum regulations. The Committee considers that the member states should be able to take further measures as they see justified to safeguard financial stability at the national level. This is particularly important as it is the member states themselves who have to bear the brunt of the cost of central government finances and socio-economic costs, if a credit institution fails or there is a financial crisis.

[2] Capital requirements regulated in accordance with law or provision.

The size of the financial sector in relation to the economy varies between the member states. A member state with a large financial sector is more vulnerable to financial crises, and a failure or a financial crisis would mean greater strain on public finances for such a member state than for a member state with a smaller financial sector. According to the Committee, the objective of the Commission's proposal - which is ultimately financial stability - can be attained much more easily if the basic capital requirements constitute minimum requirements in the same way as stated by the international Basel III regulatory standard and provided that the member states retain the possibility to raise the level of capital requirements if they consider it justified in order to safeguard financial stability at the national level.

As early as 19 May 2011, Sweden put forward to the Commission, together with six other member states, objections to the proposal for maximum levels for the institutions' capital bases.

The Committee does not consider the Commission's proposal that member states wishing to increase capital adequacy should make use of the countercyclical buffer and work with higher capital requirements within the framework of supervision is equal to having higher levels of general capital adequacy. In the opinion of the Committee, there is a risk that the proposals are insufficient. According to the Basel III agreement, the countercyclical buffer expressly aims to subdue excessively strong credit growth in the economy. This means that in normal times it should be zero. For this reason, the countercyclical buffer is neither sufficient nor equal to having higher levels of basic capital adequacy. The Commission does admittedly propose that the size of the countercyclical buffer should take into account other things than just credit growth, but this possibility may be difficult to implement in a predictable way in the regulatory framework.

To summarise, the Committee can note that the proposal's provisions on what level of capital base an institution should have at different points in time and the provisions on the two kinds of capital buffers (capital conservation buffer and countercyclical buffer) are formulated as absolute requirements, which prevent member states from adopting legislation containing higher requirements. In the opinion of the Committee, an excessively low level for an institution's capital requirements can have serious consequences for central government finances and the economy as a whole. In view of the fact that it is ultimately the individual member states that are forced to bear the brunt of the cost if an institution fails or if there is a financial crisis, the member states must have the opportunity and right at national level to take the measures they consider justifiable in order to safeguard financial stability in their country. The Committee is thus of the opinion that the Commission's proposal conflicts with the principle of subsidiarity and proposes that the Riksdag submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission with the wording presented in appendix 2.

Finally, the Committee notes that there are a number of regulatory proposals in the Commission's proposal which require thorough analysis, both on grounds of principle and from a horizontal perspective, before it is possible to assess whether such sector-specific regulation is appropriate or not. This also applies to the effect the rules on risk weighting models may have for the real capital requirements of banks. The Committee presumes, however, that such analyses will be carried out during continued negotiations on the proposal as a whole.

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APPENDIX 2

Reasoned opinion of the Riksdag

The Riksdag welcomes the Commission's work on regulations for introducing the Basel III agreement in the EU and considers the proposal to be largely well formulated and that it has the potential to strengthen financial stability in the EU and to strengthen the single market in the financial area. However, the Riksdag has objections to the full harmonisation proposed by the Commission in certain points of the proposal. The risk is that the content of the Basel III agreement may be watered down when such harmonisation is implemented as legislation to apply in the EU, as what were intended to be minimum regulations instead become an enforceable EU standard.

The Commission's proposal for a regulation on prudential requirements for credit institutions and investment firms (COM/2011) 452 final, which is presented in the statement from the Committee on Finance 2011/12 FiU29 Subsidiary check of proposal for a regulation on credit institutions and investment firms, has been examined by the Riksdag from the point of view of the implementation of the subsidiarity principle. The proposal as a whole consists of two parts: a directive and a regulation. The Commission places particular emphasis on the fact that the regulation and the directive form a package and that the directive should therefore be read together with the regulation. According to the Commission, the two legal instruments should, together, form the legal framework governing banking activities and supervision rules for credit institutions and investment firms. The Riksdag, which has had the task of examining the regulation from the point of view of subsidiarity, has therefore also considered the importance that the directive has in this context.

The provisions relating to the basic levels for capital requirements (also known as Pillar I requirements) are formulated as absolute requirements that prevent member states from legislating for higher requirements. Because they are formulated this way, the provisions have the character of maximum regulations. The Riksdag considers that the member states should be able to take further measures as they see justified to safeguard financial stability at the national level. This is particularly important as it is the member states themselves who have to bear the brunt of the cost of central government finances and socio-economic costs, if a credit institution fails or there is a financial crisis. In addition to this, the size of the financial sector in relation to the economy varies between the member states. A member state with a large financial sector is more vulnerable to financial crises, and a failure or a financial crisis would mean greater strain on public finances for such a member state than for a member state with a smaller financial sector.

According to the Riksdag, the objective of the Commission's proposal - which is ultimately financial stability - can be attained much more easily if the basic capital requirements constitute minimum requirements in the same way as stated by the international Basel III regulatory standard and provided that the member states retain the possibility to raise the level of capital requirements if they consider it justified in order to safeguard financial stability at the national level.

The Riksdag does not consider that the Commission's proposal that member states that wish to increase their capital adequacy should make use of the countercyclical buffer and work with higher capital requirements within the framework of prudential supervision are on an equal footing with a higher general level of capital adequacy. The proposals run the risk of being insufficient. According to the Basel III agreement, the countercyclical buffer expressly aims to subdue excessively strong credit growth in the economy. This means that in normal times it should be zero. For this reason, the countercyclical buffer is neither sufficient nor equal to having higher levels of basic capital adequacy. The Commission does indeed propose that the size of the countercyclical buffer should take into account other things rather than merely credit adequacy, but this possibility may be difficult to implement in a predictable way in the regulatory standard.

In the view of the Riksdag, the Commission should submit a new proposal corresponding to the proposal that we have now considered but with an amendment in which it is clearly stated that the member states will be able to raise the level of the basic capital requirements if they consider it justified to safeguard financial stability at the national level.