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Internal Market and Services DG

FINANCIAL INSTITUTIONS

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Summary Report
European Banking Committee
Brussels, 2 December 2011

1. INTRODUCTION BY CHAIRMAN

- Mr. Mario Nava, Acting Director in DG MARKT, and Ms. Nathalie de Basaldua, Head of Unit in DG MARKT, who co-chaired the meeting, welcomed the participants.
- The agenda was approved by EBC Members.

2. FINANCIAL STABILITY – RECENT REGULATORY DEVELOPMENTS

CRISIS MANAGEMENT AND BANK RESOLUTION

- The Chairman reiterated that the COM remains open-minded on the financial stability proposal, that it wishes to adopt the best possible text at the best possible moment and is determined to finish it in the coming weeks.
- Following a point from one delegation, the Chairman confirmed that a ‘wisemen’ group will be set up to address the issue of bank structure.
- COM presented an update on crisis management and bank resolution proposal and the financing required. COM proposed that cross-border issues should be resolved by common solutions. The agencies should play a conciliatory and facilitating role. COM asked for the group's view on when the framework should be adopted and how and where it should be applied. COM asked in particular about including the bail-in tool in the regime.
- On the question of when to launch the package, some Member States were concerned that launching soon would worsen an already unstable economic situation. Some Member States expressed their view that this could send a negative message to markets and that if bail-in was introduced there could be a chain downgrading of banks, possibly in some Member States more than others. COM had the view that having a resolution package to launch in the near future could enhance certainty and thereby have a positive effect, a view supported by other Member States. All agreed on the importance of having a clear communication strategy. It was suggested that the best timing for the launch would be when the market is at its deepest.
- On the subject of bail-in, Member States expressed differing views on its role in the package. Member States supported the need to have a text on resolution but not all agreed to the introduction of any financing or bail-in arrangements at this stage. Some asked to have further examination of the burdens and interactions and clear indication of which instruments are valid.
- On bank resolution and financing, some Member States supported more linkage with the DGS Directive.
- The incoming Danish Presidency stated their commitment to giving this file a high priority. It suggested to the COM to check with rating agencies when the rating impacts would occur in the timeline.
- One delegation expressed concern over EBA intervention and asked for clarity on what grounds EBA can intervene. Some concern was also raised on home-host stability and intra-group support.

- COM concluded that whilst bail-in was a sensitive issue, the COM should evaluate whether a proposal might be credible without it. The package could contribute to more certainty in the market. COM took note of the concerns on the timing of the proposal and potential bank downgrades. It also noted concerns over the EBA role in resolution, but stated a mediator could be very useful in certain circumstances. COM also agreed to the need to link with DGS. On communication COM stated that it must be made clear that this is a proposal for the future, it will not solve our current problems but will put in place appropriate legislation for the future.

DEPOSIT GUARANTEE SCHEMES (DGS)

- COM presented an update on the ongoing DGS negotiations. The trilogue between the Parliament, Council and COM started in mid-September and so far four meetings have taken place. All parties of the trilogue are keen to reach agreement on the first reading. In this context, COM recalled the October conclusions of the European Council which had called for finalising the DGS negotiations before the end of this year.
- COM summarised the most important political issues discussed during the trilogue: target level for ex-ante funding (including phasing-in period to reach the target level, the composition of ex-ante funding, notably payment commitments, etc), the use of funds (payout, transfer of deposits, early intervention), risk based contributions (mandatory vs. voluntary, EBA standards vs. non-binding guidelines), mutual borrowing (mandatory vs. voluntary), payout deadline (ways to gradually reduce it in the future).
- Some delegations pointed out the considerable pressure on banks due to several initiatives that have been proposed so far and those which are to be proposed in the near future (CRD, DGS, bank resolution, etc). In particular, as regards DGS, they emphasised that the target level for ex-ante funds means billions of euros in absolute terms, and this is particularly burdensome for Member States with ex-post DGS.
- Some delegations stated that the link between DGS and resolution was so important that the forthcoming COM proposal on bank resolution should be taken into account during the negotiations on the DGS Directive. They had some concerns on the overall financial burden stemming from both initiatives.
- COM admitted that there are indeed several initiatives at the same time, but they are responses to the financial crisis. As regards DGS, this initiative is needed in order to send a positive signal to markets that depositors are safe. This is to avoid bank runs and, in turn, contribute to overall financial stability.
- COM reiterated that it recognises the link between DGS and resolution and this is, to some extent, stipulated in the original COM proposal on DGS. However, COM believes that it is not necessary to delay the DGS negotiations until the end of negotiations on bank resolution.
- On the target level for ex-ante funds of DGS, COM stated that it depends on the use of DGS funds: if the use is limited, the target level may be lower; in case of a broader use (for additional purposes beyond a payout), the target level should be higher.

CREDIT RATING AGENCIES (CRAs)

- COM gave an update on the proposal on Credit Rating Agencies which was adopted on 15 November. The proposal aims to address issues in five areas: reliance of ratings, sovereign debt ratings, competition/transparency in the rating industry, civil liability and conflicts of interest.
 - 1) over-reliance: Banks should not solely or mechanistically rely on external ratings. The proposal includes a general provision that it is not only valid for banks but all financial institutions. It includes a provision for the European supervisory authorities to avoid reference to external ratings in their guidelines.
 - 2) sovereign debt ratings: defined in the text and then proposed more frequent ratings, at least every 6 months. Rating agencies must publish their full research reports to justify any action taken.
 - 3) transparency and competition: the proposal recommends that ESMA set up a European rating index. It proposes that issuers disclose information on structured finance instruments to allow investors to make an own credit risk assessment. Structured finance instruments: should have a double rating. Propose improvements on communication of rating methodologies. ESMA will monitor the basis and functioning of methodologies. The 12 hour pre-notification requirement extended to one full working day.
 - 4) civil liability: proposes a provision that is directly applicable and states that where any intentional or gross negligent infringement of the CRA Regulation has an impact on the rating, the agency should be held liable.
 - 5) conflicts of interest: should be mitigated with an external rotation rule – issuers should not work only with a few ratings agencies. There would be a 4 year cooling off period between the two parties. There are provisions against conflicts of interest between important shareholders and CRAs.
- Member states congratulated the COM on the CRA proposal.
- Some Member States fully supported reducing the over-reliance of financial institutions on CRA ratings.
- Some Member States suggested looking carefully at potential consequences of civil liability, the role of ESMA and there was some concern on the issue of endorsement of third country ratings.

3. FINANCIAL CONGLOMERATES

- COM gave a presentation of the Fundamental review roadmap of the Financial Conglomerates Directive (FICOD) which was discussed at the EFCC meeting.
- Joint Forum aiming to publish on 17 December. If they do so, then COM will publish a call for evidence to stakeholders in mid-January.
- On the subject of FICOD's consolidation methods, it was noted that the COM already observed a need for more harmonisation and stricter specifications in 2007. In parallel, the COM is assisting the Presidencies to clarify the text of Article 46 in the Regulation proposal. COM convinced that specifications on the consolidation methods will be ready before the Basel III deadline of January 2013.

- COM noted that capital methods must be dealt with as part of the CRD IV process and not later with the full implementation of FICOD2.
- CRD IV and Solvency 2 comparison tables are to be produced for the next EFCC meeting on 2 February.
- COM reported that FICOD2 will have an impact on complex banking and complex insurance groups as well. The review also touches upon the debate on group structures.
- COM asked the EBC group if the FICOD2 exercise was sufficiently comprehensive and concise.
- Many Member States generally supported the initiative and the harmonisation of the consolidation method. However, there were some queries as to who was determining and ensuring the harmonisation work. COM confirmed it has been the empowerment in FICOD article 21a since Omnibus 1 entered into force last January, amended for the Basel 3 deadline as article 139 in the CRD IV Directive text, and repeated in CRD IV Regulation article 46(4).
- Some Member States requested clarity on the rules and rationale of FICOD2. COM explained that FICOD does not touch upon licence requirements or sector specifics like the actuarial function in the board of insurance groups. Group risks, i.e. the 5Cs: capital, concentration, conflict of interest, contagion, and complexity remain the rationale for a supplementary framework on complex groups.
- One Member State requested clarification on the link with SIFIs. COM replied that in January's EFCC it was decided that the conglomerates directive should not be turned into a SIFI directive. FICOD is about supervision, not about fiscal decisions.
- On the subject of which tools should be used, COM reiterated that first it would look at the substance and then the available tools.

4. CAPITAL REQUIREMENTS DIRECTIVE (CRD IV)/REGULATION

- COM presented an update on the draft progress report which was passed this week in ECOFIN. After the first series of CRD IV working party meetings, the Polish Presidency prepared an ECOFIN progress report highlighting some areas requiring further discussion (including flexibility within the internal market, definition of own funds, liquidity coverage ratio and the leverage ratio).
- Parliament has welcomed the proposal and confirmed their support for maximum harmonisation, with flexibility within an internal market context.
- COM and other Member States thanked the Polish Presidency for their work. The Progress Report issued by the Presidency confirmed the delivery date for the CRD IV proposal as June 2012. The Danish Presidency will issue a first compromised draft at the beginning of January and reiterated the importance of CRD IV.
- The European Economic and Social Committee has prepared a draft opinion and the ECB is preparing its legal opinion.

- The Chairman asked for Basel Member State support at BCBS for all delegations' agreement (and namely those most relevant for the EU) to implement Basel.
- One day of the next CRD IV meeting in December will be dedicated to EBA and binding technical standards.
- COM gave an overview on CRD IV Working Group in Council with discussion topics such as own funds, non recognition of unvalued fair gains, how to define difference between specific and general credit adjustments. There was also discussion on buffers, liquidity (definition of the single liquidity subgroup), leverage ratio (text committing enough to Pillar 1, disclosure of leverage ratio from 2015), home-host issue.
- One Member State vowed their support to the Presidency and COM to bring this to a fruitful and rapid conclusion. The political solutions need to be found now.
- COM reiterated that all technical issues would be clarified soon and that quality would not be compromised by closing CRD IV in a timely fashion.
- Two Member States said that fast finalisation of the CRD IV negotiations should not be a separate issue of paramount importance. They reiterated the Danish comments that the negotiations plan is quite ambitious. These Member States stated their disappointment of the Commission plan on how to deal with the issues of maximum harmonisation and liquidity subgroups.

5. ANY OTHER BUSINESS

- COM informed that the new issue of the EBC Info-letter will be prepared by the EBC Secretariat around the end of the year. The Info-letter is available at the COM website.
- It was agreed that there would be a discussion at the next meeting on micro-credit.
- COM recalled the date of the next EBC meeting:
→ 5 March 2012 (and subsequent dates to be sent soon).