



**EUROPEAN COMMISSION**  
Internal Market and Services DG  
**FINANCIAL INSTITUTIONS**  
Banking and financial conglomerates

**EBC/034/10**  
21 December 2010

**Summary Report  
of the Joint Meeting  
of the European Banking Committee  
and the CRD Working Group  
Brussels, 6 December 2010**

## **1. APPROVAL OF THE AGENDA**

- Ms Nadia Calviño, Deputy Director General in DG MARKT, who chaired the meeting, welcomed the participants.
- The agenda for the meeting was approved by EBC and CRDWG Members [hereinafter Members].

## **2. APPROVAL OF THE NEW RULES OF PROCEDURE**

- COM explained that the new Rules of Procedure for the EBC were to be adopted at the previous EBC meeting (in September), but some EBC Members were not able to participate in that meeting due to the airport strike in Brussels. Therefore, it was decided to postpone the approval of the new Rules of Procedure until the next EBC meeting (in December).
- The new Rules of Procedure were adopted by EBC Members and entered into force upon adoption.

## **3. CAPITAL REQUIREMENTS DIRECTIVE (CRD IV) AND RELATED ISSUES**

### **(a) Definition of capital**

- COM clarified that the draft directive text under discussion remained work-in-progress and would be subject to further revision, taking account of the comments of Member States and the finalisation of the Basel rules text.
- There was general support for the COM's proposed approach, recognition that work continues in the CRDWG Subgroup on capital, and a number of issues and concerns were highlighted by Members.
- There was a general call for consistency in the CRD requirements as to capital. Members noted the need to address EU specificities in this area of Basel III implementation.
- Members agreed on the importance of clarifying the transitional arrangements for CRD IV, including the interaction of the grandfathering requirements of CRD II and CRD IV. COM noted that further progress on this important topic could now be made, and explained its intention to discuss a proposed approach to transitional provisions for capital with Member States in the near future.
- Some Members expressed concern about the proposed definition of Common Equity Tier 1 (CET1) capital. One concern related to the COM's proposal to place greater onus on the substance of a CET1 than on its form, as compared with the Basel III approach which places equal weight on the legal form and substance of a CET1 instrument. Another related to the proposal to exclude from CET1 instruments with preference in dividend payment.
- Many Members felt it would be appropriate to specify in greater detail in level 1 the requirements for CET1 capital of NJS companies. COM confirmed this is an aspect of the text on which it continues to work, and will strike an appropriate balance.
- One Member highlighted the need to consider explicitly the potential implications for the scope of application and certain other definitions of amendment of the definition of a participation. COM confirmed this was being considered, including in the CRDWG Subgroup on capital.
- A number of Members highlighted the proposed treatment of unrealized gains as a concern that should be addressed to eliminate pro-cyclicality and volatility in bank capital. COM

noted this is an area on which there are differing views and explained its intention to consider the issue further.

- There was general support for the com's proposal not to afford to Mortgage Servicing Rights an exemption from full deduction from CET1, as such assets had highly uncertain value and were a US phenomenon. One Member expressed concern about the potential competitive implications for Member States operating in the US, and suggested a possible derogation in such circumstances.
- Members were generally content with the COM's proposal that payments on Tier 1 hybrid capital instruments should be capable of being cancelled at all times. However, a number of Members expressed concern about the discretion this may afford, considering that payments should be cancelled only when necessary.
- There was general support for the com's proposal for all Tier 1 hybrids to have principal loss absorbency through write down / conversion at a CET1 trigger. One Member considered such a requirement was not necessary in all cases.
- On the items still being discussed in Tier 2, one Member stated that the quality of these reserves merited inclusion in regulatory capital and raised the issue of whether such reserves would need to be disclosed on an aggregate or individual basis.
- It was suggested that some more examples of the treatment of minority interest should be discussed in the CRDWG Subgroup on capital.
- Members considered that an appropriate balance should be struck between the requirements specified in level 1 and those on which EBA would develop regulatory technical standards.

#### **(b) Liquidity risk**

- There is general support for the orientation of the draft proposal and broad agreement that the discussion is not about home vs. host country responsibilities, but about ensuring effective supervision under a harmonised liquidity standard. In that respect, Members appreciated the elements of the proposal that seek to attain this, subject to further refinements of the text that aim at further precision regarding the rights and obligations of competent authorities.
- In developing these further refinements, COM will in particular consider: the need for clear responsibilities, the scope of precautionary measures by the host authority and their interaction with the Winding-up Directive, the need for the home authority to take into account concerns of the host authority also in the absence of an actual breach of requirements.
- The process for the solo waiver was further clarified by COM in response to the request for implementing this as an option for competent authorities. In this respect, competent authorities would indeed be obliged to consider the application for the waiver from a group of credit institutions, but the competent authorities had the possibility not to grant the waiver if they found the applicable conditions are not met. In particular, the final decision in this respect would be left to the supervisor of every individual credit institution within the group.
- COM clarified that they envisaged a separate co-decision proposal for the revised Net Stable Funding Ratio (NSFR) to become binding after the observation period. COM noted that some Members would like to specify the definition of liquid assets in a separate co-decision proposal towards the end of the observation period (but would be difficult to implement given the envisaged start date of the ratio in 2015 dropped that). Another

delegation requested that the decision to implement the Liquidity Coverage Ratio (LCR) requirement as a whole should only be taken by co-decision after the observation period. COM emphasised that its intention is to have liquidity standard by the beginning of 2015.

### **(c) Leverage ratio**

- COM pointed out that the leverage ratio was a new tool in the regulatory toolbox and stressed the importance of testing it thoroughly before deciding on whether or not it should be introduced as a binding requirement. COM also recalled that the majority of Members had agreed with this at the previous meeting.
- COM then sought the views of Members on two open issues concerning the leverage ratio. The first one was whether or not banks should be required to publicly disclose their leverage ratio starting from 1 January 2015. The second one was whether banks should have the option to use the Original Exposure Method (OEM) when valuing their derivatives exposure for the purpose of the leverage ratio or they should be required to use just the Current Exposure Method (CEM).
- On the first issue, most Members took the floor and a large majority of them supported the disclosure of the leverage ratio starting from the abovementioned date.
- On the second issue, just over a half of Members took the floor and a slight majority of them preferred to keep the option to use OEM open (permanently or at least during the observation period).
- COM noted that the second issue mostly concerns small banks. Since the Basel rules were not applicable to those banks, the question of whether or not keeping the OEM option open would not raise any issues of equivalence with Basel. COM summarised the discussion, acknowledging the divergent opinions of Members and stressing that although clear majorities could be identified on both issues, a final decision would need to be taken at an appropriate level.

### **(d) Counterparty credit risk**

- COM recalled that there is a broad support for the policy measures proposed, including the new capital charge for credit valuation adjustment risk (CVA) supposed to capture mark-to-market losses due to a deterioration of the credit quality of the counterparty. These changes will increase the capital charge for OTC derivatives in order to reinforce incentives to move OTC trades to central counterparties (CCPs).
- Members discussed the following three outstanding issues:
  - The treatment of incurred credit valuation adjustments (CVA) – how much credit should banks get for provisioning/making value adjustments for CVA risk: Members supported further work to be conducted by COM and the CRDWG Subgroup on counterparty credit risk, including a public consultation and impact assessment. One Member expressed serious concerns about the treatment proposed by the Basel Committee in this area.
  - The modalities of applying (or not) the large exposures regime to exposures to CCPs: most Members argued that it is important to limit excessive concentration risk arising from exposures to CCPs. Therefore, further work should be conducted as to whether applying some sort of the large exposures regime is warranted. At the same time, a number of Members called for caution and stressed that any measures

in this regard should not conflict with the objectives to incentivise firms to move their derivative transactions to CCPs. COM undertook to examine this issue further.

- The merits of maintaining, amending or dropping the Original Exposure Method (OEM): most Members preferred maintaining this method in CRD. COM undertook to conduct further work in this area and report progress to the next EBC meeting.

#### **(e) Capital buffers**

##### *Counter-cyclical buffers*

- Members in its very large majority agreed with the basic principles of the COM approach which follows the concept of international reciprocity agreed in Basel.
- Two Members argued that a ceiling of 2.5% should be applicable in any event under the counter-cyclical buffer framework. The Basel agreement allows that a national authority sets higher buffers for banks located in their own jurisdiction - the maximum buffer to be held by other banks for credits given in that jurisdiction (reciprocity obligation) would be 2.5%. One Member State argued that the buffer regime should only be applicable to new credit (and not, as suggested by COM, to all credit).
- On the rules for governance, Members agreed that decisions on the level of the counter-cyclical buffer should be taken at the national level, be "guided" by general principles issued by the ESRB and transparently communicated.
- Members presented different views on the suggested role for the ESRB to "review" decisions of the national authorities. More particularly, Members controversially discussed the role of the ESRB to give recommendations on buffer levels and the level of transparency of these recommendations. COM underscored the importance of peer reviews and the role of the ESRB as an institution to address all issues of systemic risk. In order to safeguard the coherent application of the framework across Member States, the ESRB should have the possibility to give recommendations.

##### *Restrictions on earnings distributions*

- Members agreed with COM assessment that the Basel rules text does not impose an "automatic" implementation of restrictions if the buffer is not met. Hence, there is to some extent a political choice as to what extent flexibility for supervisors should be given to waive the restrictions (the political choice would be to define the "conditions" of a waiver).
- COM presented three options entailing different levels of flexibility (starting from fully "automatic" rules). Most Members indicated their preference for "automatic rules", with little flexibility for supervisors to waive the restrictions. However, there was not enough time to discuss the scenarios identified by the CRDWG Subgroup on capital buffers. It was concluded that further work needs to be done on the working group level.

#### **(f) Single rule book**

##### *Towards full harmonisation*

- COM noted that achieving a single rule book is at the very heart of the EU financial architecture reform. The European Council made it clear in its conclusions of 19 June 2009 that the European System of Financial Supervision (ESFS) should be aimed at "establishing a European single rule book applicable to all financial institutions in the internal market".
- COM's single rule book initiative consists of (i) removing options and national discretions of CRD, (ii) limiting areas where "goldplating" may be justified in view of domestic markets and legal specificities, and (iii) identifying areas where further harmonisation -

including by means of technical standards - is needed, as inconsistencies across Member States do not only come from differences in transposing a Directive, but also from administrative rules that specify CRD in areas left to implementation.

- COM noted that the single rule book in banking will not be achieved in one go, in the context of CRD IV. EBA should be tasked to further identify areas that need to be harmonised, and to report back to COM.
- Member States have been invited to nominate experts in the CRDWG Subgroup on single rule book to further discuss the COM initiative on the single rule book.
- One Member asked to reconsider the treatment of banks under the standardised approach and allow the use of the ratings-based assessment method alongside the sovereign risk weight based method, at least during a transitional period.

#### *Regulation in banking*

- Members discussed whether fully harmonised Pillar 1 requirements (CRD and Basel III) and Pillar 3 requirements should take the form of a Regulation in lieu of a Directive. COM explained that prudential standards directly addressed to credit institutions lend themselves to directly applicable legislation, and noted that if in certain areas more flexibility is necessary, regulations can accommodate this (implementing provision, provisions of stricter requirements, specification in domestic law of some provisions of the Regulation).
- There were mixed views of Members. While some of them welcomed the idea or showed openness to regulations in prudential matters, some others considered that a Regulation in banking should not question a timely Basel III implementation. One Member considered that a Directive was necessary because of the need to adequately address legal specificities of Member States in national law.
- The allocation of provision of CRD and Basel III into a Directive and into a Regulation would have to be further discussed with Member States.

#### **(g) Other issues**

This item was not discussed during the meeting due to shortage of time.

#### **4. ANY OTHER BUSINESS**

- Written comments to be submitted by 15 December 2010.
- COM will inform soon about the proposed timeline for the adoption of the CRD package.
- The tentative dates of meetings planned for next year: CRDWG – early to mid February (possibly 14 February 2011), and EBC – 11 March 2011. Both dates are subject to the final confirmation in due course.

#### **CLOSING ADDRESS**

The meeting was closed by a speech of Mr Jonathan Faull, Director General in DG MARKT.