

MEP Gunnar Hökmark

**Division Bank and Insurance**  
Austrian Federal Economic Chamber  
Wiedner Hauptstraße 63 | P.O. Box 320  
1045 Vienna  
T +43 (0)5 90 900-DW | F +43 (0)5 90 900-272  
E [bsbv@wko.at](mailto:bsbv@wko.at)  
W <http://wko.at/bsbv>

Ihr Zeichen, Ihre Nachricht vom

Unser Zeichen, Sacharbeiter  
BSBV 115/Dr.Egger

Durchwahl  
3137

Datum  
22 January 2015

Dear Mr. Hökmark

**Re: Draft Report on the proposal for a regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions (2014/0020(COD)) dated 22 December 2014**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, would like to submit the following remarks and proposals for amendments to the above mentioned draft report:

**Major concerns:**

- 1) Legal uncertainty: Scope has to be clarified (Recital 13, Art. 9 (1))
- 2) Definition of scope: We support the definition of COM (Art. 3)

**Additional comments in case smaller banks fall within the target group:**

- 3) Additional requirements for cooperatives (Recital 27)
- 4) Liquidity management: exemption of prohibition of proprietary trading (Art. 6 (2))
- 5) Interaction with BRRD: BRRD should have priority (Art. 19, para 2)

**Major concerns:**

**1) Legal uncertainty**

**Recital 13**

Commission Proposal	Our Proposal
(13) This Regulation will apply only to credit institutions and groups with trading activities that meet thresholds set out in the Regulation. This is in line with the explicit focus on the limited subset of the largest and most complex credit institutions and groups that in spite of other legislative acts remain too-big-to-fail, too-big-to-save and too complex to manage, supervise and resolve. The provisions of this Regulation	(13) This Regulation will apply only to credit institutions and groups with trading activities that meet thresholds set out in the Regulation. This is in line with the explicit focus on the limited subset of the largest and most complex credit institutions and groups that in spite of other legislative acts remain too-big-to-fail, too-big-to-save and too complex to manage, supervise and resolve. The provisions of this Regulation

<p>should accordingly only apply to those Union credit institutions and groups that either are deemed of global systemic importance or exceed certain relative and absolute accounting-based thresholds in terms of trading activity or absolute size. <b>Member States or the competent authorities may decide to impose similar measures also on smaller credit institutions.</b></p>	<p>should accordingly only apply to those Union credit institutions and groups that either are deemed of global systemic importance or exceed certain relative and absolute accounting-based thresholds in terms of trading activity or absolute size. <del><b>Member States or the competent authorities may decide to impose similar measures also on smaller credit institutions.</b></del></p>
<p><u><b>Justification</b></u></p> <p>We are concerned that the Regulation could be applied by competent authorities also to small banks.</p> <p>The last sentence in Recital 13 conflicts with the scope of the entire Regulation. We understand that the provisions on structural reform should be applied only to credit institutions fulfilling the thresholds requirements in Art 3 since these are indeed the ones too-big-to-fail, too-big-to-save and too complex-to-manage, as the recital rightly explains. An application to other institutions has to be avoided since this would hinder the small scale trading for smaller institutions too. Also, there remain doubts regarding the legality of such a sentence, which is not in line with the principle of legal certainty. Therefore, we propose to delete the last sentence.</p>	

**Article 9 (1)**

Commission Proposal	Our Proposal
<p>1. The competent authority shall assess trading activities including in particular: market making, investments in and acting as a sponsor for securitisation, and trading in derivatives other than those derivatives permitted under Articles 11 and 12 of the following entities:</p> <p>(a) a core credit institution established in the Union, which is neither a parent undertaking nor a subsidiary, including all its branches irrespective of where they are located;</p> <p>(b) an EU parent, including all branches and subsidiaries irrespective of where they are located, where one of the group entities is a core credit institution established in the Union;</p> <p>(c) EU branches of credit institutions established in third countries.</p>	<p>1. The competent authority shall assess trading activities including in particular: market making, investments in and acting as a sponsor for securitisation, and trading in derivatives other than those derivatives permitted under Articles 11 and 12 of the <del>following</del> <b>entities subject to Article 3.</b></p> <p>(a) a core credit institution established in the Union, which is neither a parent undertaking nor a subsidiary, including all its branches irrespective of where they are located;</p> <p>(b) an EU parent, including all branches and subsidiaries irrespective of where they are located, where one of the group entities is a core credit institution established in the Union;</p> <p>(c) EU branches of credit institutions established in third countries.</p>
<p><u><b>Justification</b></u></p> <p>We call for a clarification, that the competences of the authorities for assessing trading</p>	

activities may only be applied to institutions which reach the thresholds in Art 3 and consequently fall under the scope of the Regulation. At first glance, it seems to be clear that the whole Regulation may only be applied to these institutions (see Art. 3 [“1. *This Regulation shall apply to the following entities:*”]). However, Article 9 may be misinterpreted that in contradiction to Art 3. competent authorities shall also assess trading activities of any/smaller institutions which do not reach the thresholds of Art 3. Therefore, we propose a clear reference to Art. 3 to avoid any misinterpretation.

## 2) Definition of scope: We support the definition of COM

### Amendment 21 (Art. 3 para. 1 point b, introductory part)

COM Proposal	ECON draft report
(b) any of the following entities that for a period of three consecutive years has total assets amounting at least to EUR 30 billion and has trading <i>activities</i> amounting at least to EUR 70 billion or <b>10</b> per cent of its total <i>assets</i> :	(b) any of the following entities that for a period of three consecutive years has total assets amounting at least to EUR 30 billion and has trading <i>related exposures</i> amounting at least to EUR 70 billion or <b>50</b> per cent of its total <i>eligible liabilities for bail-in requirements as defined in Article 45 of Directive 59/2014/EU [BRRD]</i>
<b><u>Justification</u></b>	
<p>We oppose Amendment 21 as this new threshold of “50 per cent of its total eligible liabilities for bail-in requirements as defined in Article 45 of Directive 59/2014/EU [BRRD]” remains unclear. Firstly, Art. 45 BRRD provides a minimum requirement of eligible liabilities (MREL) for bail-in and not “total eligible liabilities”. Insofar, the reference to Art. 45 BRRD is not correct. Secondly, a reference to the total assets would provide more legal certainty and a level playing field, since there is no quantitative harmonization of MREL. Also, the current workstream on the qualitative side of MREL (on-going EBA consultation) make any reliable impact assessment impossible. Last but not least, the MREL level of an institution required by the authority may be much more volatile since it is linked to risk criteria and hence make a pending separation much more unpredictable. <b>Therefore, we support maintaining the definition of the Commission’s proposal.</b></p>	

## Additional comments in case smaller banks fall within the target group:

### 3) Additional requirements for cooperatives

#### Amendment 11 (Recital 27)

COM Proposal	ECON draft report
(27) Groups that qualify as mutuals, cooperatives, savings institutions or similar have a specific ownership and economic	(27) Groups that qualify as mutuals, cooperatives, savings institutions or similar have a specific ownership and economic

<p>structure. Imposing some of the rules related to separation could require farreaching changes to the structural organisation of those entities the costs of which could be disproportionate to the benefits. To the extent that those groups fall within the scope of the Regulation, the competent authority may decide to allow core credit institutions that meet the requirements set out in Article 49(3)(a) or (b) of Regulation (EU) No 575/2013 to hold capital instruments or voting rights in a trading entity where the competent authority considers that holding such capital instruments or voting rights is indispensable for the functioning of the group and that the core credit institution has taken sufficient measures in order to appropriately mitigate the relevant risks.</p>	<p>structure. Imposing some of the rules related to separation could require farreaching changes to the structural organisation of those entities the costs of which could be disproportionate to the benefits. To the extent that those groups fall within the scope of the Regulation, the competent authority may decide to allow core credit institutions that meet the requirements set out in Article 49(3)(a) or (b) of Regulation (EU) No 575/2013 to hold capital instruments or voting rights in a trading entity where the competent authority considers that holding such capital instruments or voting rights is indispensable for the functioning of the group and that the core credit institution has taken sufficient measures in order to appropriately mitigate the relevant risks.</p> <p><del><i>Irrespective of a decision to separate, the competent authority should have the power conferred by Article 104(1)(a) of Directive 2013/36/EU to impose an own funds requirement when the volume of risks and trading activities exceeds certain levels, in order to incentivise an institution not to take unnecessary risks that threaten its own financial stability or that of the Union, whether in whole or in part.</i></del></p>
<p><b><u>Justification</u></b></p> <p>We do not support Recital 27, as it seems to be a discrimination against mutual, cooperatives and savings institutions. SREP-ratios may only be applied to institutions if the requirements in Art. 104 of the Directive 2013/36/EU are fulfilled. A unilateral extension of the before mentioned provision only to certain legal forms seems entirely inappropriate and unjustified. We therefore urge to delete Amendment 11.</p>	

**4) Management: exemption of prohibition of proprietary trading**

**Article 6 (2) (b)**

Commission Proposal	Our Proposal
<p>2. The prohibition in point (a) of paragraph 1 shall not apply to:            (a) financial instruments issued by Member States central governments or by</p>	<p>2. The prohibition in point (a) of paragraph 1 shall not apply to:            (a) financial instruments issued by Member States central governments or by</p>

<p>entities listed in point (2) of Article 117 and in Article 118 of Regulation (EU) No 575/2013;</p> <p>(b) a situation where an entity referred to in Article 3 meets all of the following conditions:</p> <p>(i) it uses its own capital as part of its cash management processes;</p> <p>(ii) it exclusively holds, purchases sells or otherwise acquires or disposes of cash or cash equivalent assets. Cash equivalent assets must be highly liquid investments held in the base currency of the own capital, be readily convertible to a known amount of cash, be subject to an insignificant risk of a change in value, have maturity which does not exceed 397 days and provide a return no greater than the rate of return of a three-month high quality government bond.</p>	<p>entities listed in point (2) of Article 117 and in Article 118 of Regulation (EU) No 575/2013;</p> <p>(b) a situation where an entity referred to in Article 3 meets all of the following conditions:</p> <p>(i) it uses its own capital as part of its cash management processes;</p> <p><b><i>(ia) it buys or sell instruments or hold units or shares which constitutes a prudent liquidity management for itself or for member institutions of the same banking sector</i></b></p> <p>(ii) it exclusively holds, purchases sells or otherwise acquires or disposes of cash or cash equivalent assets. Cash equivalent assets must be highly liquid investments held in the base currency of the own capital, be readily convertible to a known amount of cash, be subject to an insignificant risk of a change in value, have maturity which does not exceed 397 days and provide a return no greater than the rate of return of a three-month high quality government bond.</p>
---	---

**Justification**

Liquidity management in decentralized sectors is characterized by the fact that the central institution is managing the liquidity reserves of its member institutions. These liquidity reserves can be of statutory or contractual nature. For instance, in Austria a minimum liquidity reserve of members of decentralized sectors at their central institution is managed by law. It is not sufficiently clear if transaction of the central institution to assess these reserves shall be exempted of the prohibition of proprietary trading. Therefore, we suggest a clarification in the text.

**5) Interaction with BRRD: BRRD should have priority**

**Amendment 60 (Article 19 para. 2)**

Commission Proposal	ECON draft report
<p>2. When carrying out the assessment in accordance with Article 9 and when requiring the core credit institution not to carry out certain activities in accordance with Article 10, the competent authority shall take into account any ongoing or preexisting resolvability assessments carried out by any relevant resolution authority</p>	<p>2. When carrying out the assessment in accordance with Article 9 and when requiring the core credit institution not to carry out certain activities in accordance with Article 10, the competent authority shall take into account any ongoing or preexisting resolvability assessments carried out by any relevant resolution authority</p>

<p>pursuant to <i>Article 13</i> and <i>13(a)</i> of Directive [BRRD].</p>	<p>pursuant to <i>Articles 15</i> and <i>16</i> of Directive <i>2014/59/EU</i> [BRRD].  <del><i>A finding by the relevant resolution authority that there are no substantive impediments to resolvability shall not, of itself, be deemed sufficient to demonstrate that the conclusions referred to in Article 10(3) are not justified.</i></del></p>
<p style="text-align: center;"><u><b>Justification</b></u></p> <p>The interaction of the ECON draft report with the BRRD is not clear. Whereas <b>Amendment 47</b> is correctly referring to Art. 17 BRRD when describing the measures a supervisory authority may charge an institution with, Amendment 60 says that if a competent authority assesses that there are no substantive impediments to resolvability (according to the BRRD), this shall not suffice to avoid a separation decision. For an effective interaction between the BRRD and the ECON draft report, it is only consequent that when a resolution authority assesses an institution to be resolvable, no separation decision is required since the rationale of the ECON draft report as well as the Commission’s proposal is to make G-SIB banks resolvable. <b>Therefore we would suggest deleting the second paragraph of Amendment 60.</b></p>	

Please give our concerns due consideration.

Yours sincerely,

Dr. Franz Rudorfer  
 Managing Director  
 Division Bank and Insurance