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Remarks during the discussion on Bank Structural Reform
Consideration of amendments

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We have come a long way in regulating the EU banking sector. We also know however that the problems confronting Europe's financial institutions go beyond capital requirements and contingency plans for crisis scenarios. The size, complexity and degree of interconnectedness of systemic banks still pose serious problems today. This makes our discussion on Bank Structural Reform (BSR) extremely timely.

Gunnar's report offers a good starting point for our discussion. I have mentioned before that I welcome his risk based approach to separation (in particular, his preference for prudential measures of risk exposures over automatic triggers, which in effect imply formulating a threshold for mandatory separation when trading related risk exposures are above 50% of eligible liabilities under the BRRD). Going beyond this overall philosophy however, I have tabled several amendments to the report addressing specific issues, as follows:

Home-host issue:

Neither the Commission proposal, nor Gunnar's report provide for an appropriate involvement of host authorities in the decision-making process on the application of article 10 to require that a core credit institution does not carry out certain trading activities. In particular, departing from the model of home-host interaction chosen in other financial services files is questionable, and a fair balance between home and host responsibilities should be ensured. Should the decision to separate the group be taken only at top consolidated level, trading activities would likely be centralized in the home country, creating a shift of business from local markets with a consequent impact on the real economy.

The amendment of article proposed by me aims at restoring the balance of powers set up in the CRD 4, where the joint-decision procedure is subject to a binding mediation of the EBA in case of disagreement between the home and the host supervisor. The amendment moreover specifies, that in instances in which the EBA cannot reach a decision within one month, the competent authority of the jurisdiction where a subsidiary potentially subject to separation is based, can reach its own decision concerning that subsidiary.

Definition of market-making:

The definition of market making employed by the Commission is not sufficiently specific. My amendment aims to define it with a higher degree of granularity. The definition is based on the Regulation (EU) n° 236/2012 on short selling. This

proposed definition of market-making covers the activities which can be analysed as a service provided to the client or as hedging positions arising from the fulfilment of said activities.

Impact of BSR on private equity and venture capital market:

The private equity (including venture capital) industry plays an important role in delivering smart, sustainable and inclusive growth that creates jobs and enhances the long-term competitiveness of the European Union. This role partly depends on the relationship of the private equity industry with banks and therefore the proposal on banking structural reform (BSR) should not ignore the benefits this relationship can bring.

Article 6 of the BSR proposal prohibits banks from engaging in proprietary trading in financial instruments, trading of commodities and investing in hedge funds. However the proposal allows banks to engage in certain activities that are beneficial for the real economy and Article 6(3) provides an exemption for a limited group of funds.

According to Article 6(3) private equity funds are exempted from the ban on proprietary trading, provided that they are *close-ended and unleveraged*. There are however closed-ended AIFs that have an equally beneficial role for the real economy and that deploy a limited amount of leverage. This leverage is not substantial and in any event far smaller than most financial institutions, whether banks or hedge funds.

In some cases closed-ended AIFs may be regarded as leveraged because occasionally they may enter into certain transactions, which are necessary to facilitate their day-to-day business but may be technically considered as leverage. As a consequence such funds would not be able to benefit from the exemption in Article 6(3) of the structure of banking proposal. Therefore in our opinion a binary distinction between “leveraged” and “non-leveraged” funds is not appropriate and such a stark division may exclude from the exemption private equity funds who are investing in the real economy and do not pose any systemic risk given the small amounts of leverage that they are using.

This is why I believe that the exemption for private equity funds should rather be built on the distinction between AIFs that are *substantially* leveraged and AIFs that are *not substantially* leveraged.

The concept of “*substantial leverage*” is already defined in EU law in the AIFMD framework. The directive also provides tools for monitoring and addressing any potential systemic risk that could arise from fund leverage. Where the stability and integrity of the financial system may be threatened, the competent authorities have the power to impose limits on the level of leverage. This solution provides supervisors with a robust tool to intervene if fund leverage threatens financial stability.

For closed-ended and unleveraged AIFs to be exempted from the ban they also need to be established in the EU or if they are not established in the EU they need to be marketed in the EU according to Article 35 or 40 of AIFMD. This means that *only* non-EU AIFs that are marketed in the EU with a passport will benefit from the exemption from the proprietary trading ban. Other non-EU AIFs, which are either marketed without a passport or are not marketed in the EU, will not be allowed to use this exemption.

I do not believe that this is the right approach as it would not allow certain AIFs that can positively contribute to the financing of the economy, to benefit from the exemption. Provided that a fund is closed-ended and not substantially leveraged in accordance with the AIFMD framework, it should be able to benefit from the exemption.

Finally, article 6(3) also provides an exemption for “qualifying venture capital funds” as defined in Article 3(b) of the EuVECA regulation. Although the EuVECA regulation is a very good initiative to improve access to finance for SMEs, I do not see it justifiable to require venture capital funds to be EuVECA designated to qualify for the exemption. The exemption from the proprietary trading ban should also apply to venture capital funds that do not use the EuVECA label.

EuVECA remains an *optional* regime and requires fund managers to comply with additional criteria to be eligible to use the EuVECA label. There are many venture capital funds that operate only nationally and are either not interested in getting the EuVECA label or are simply unable to be EuVECA designated because of the nature of their business.

Hence I suggested an amendment that allows venture capital funds to be exempted from the proprietary trading ban, provided that they meet the definition of venture capital fund set out in EU law.

Correction to Gunnar's drafting on minimum requirement on eligible liabilities (MREL) issue:

In article 3, paragraph 1, point b, Gunnar proposes to set the limit for potential separation at a level where trading related risk exposures account for ‘50% of its total eligible liabilities’ in order to create a link between trading related risks and MREL. Gunnar’s wording currently only includes eligible liabilities and omits the part of ‘own funds’ that is part of the MREL definition in Article 45 of the BRRD. The wording should therefore be corrected to ensure that banks with high proportions of own funds in their MREL are not discriminated and thus Art 45 of the BRRD is reflected appropriately.

I look forward to hearing your views and to reaching a fruitful compromise.