



European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB)
European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

0345/2010

LDR

To : Members of the Economic and Monetary Affairs Committee
European Parliament
B - 1000 Brussels

Brussels, 9 April 2010

Re: EBIC messages for ECON discussions concerning the draft legislation amending the Capital Requirements Directive as regards the trading book, re-securitisations, and the supervisory review of remuneration policies (“CRD 3”)

Dear Member of the Economic and Monetary Affairs Committee,

The European Banking Industry Committee (EBIC), which brings together European banking associations to speak with one voice on financial matters of common interest, would like to briefly convey to you the main concerns shared by the banking industry in relation to the draft EP report and the discussions in ECON on the proposals for a directive amending the Capital Requirements Directive concerning the trading book, re-securitisations, and the supervisory review of remuneration policies (“CRD 3”).

EBIC’s messages on the CRD 3 proposals should be read in the light of EBIC’s general support for the announced regulatory programmes of the European decision-makers and the Financial Stability Board to address and repair the current shortcomings in the prudential framework. Furthermore, the remarks should take into account EBIC’s firm belief that there is a strong need for aligning EU legislation with international regulatory standards adopted by the Basel Committee on Banking Supervision. EBIC is therefore eager to be involved in all relevant policy debates and to substantially contribute to ongoing debates.

Need for legal certainty and consistency as regards capital requirements

The banking industry generally agrees that there have been deficiencies especially in the prudential treatment of complex financial instruments, as well as of the trading book and that there is a need to remedy such shortcomings. However, EBIC would like to underline that whereas the proposed amendments to the CRD may have a strong rationale when looked at individually, their effects need to be considered in the broader context of the overall regulatory capital requirements reforms that are envisaged.

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The banking industry is currently faced with multiple regulatory proposals stemming from different sources. Each of the envisaged regulatory changes will most probably entail a significant increase in the level of capital required for banks. The cumulative impact of the measures put forward since the financial crisis is at present being assessed and many of the proposals currently on the table will be subject to further details and calibration once the results of the quantitative impact analysis will become available. The banking industry is actively involved in such ongoing impact analysis, whilst having to cope with major uncertainties as regards the final regulatory output to be expected. Such uncertainties impinge to a large extent on the way day to day banking business is carried out and on the forward planning of activities.

Concerns regarding the extension of the Basel I floors

In this context, where ongoing and future regulatory reforms substantially affect banking, the additional prolongation of already expired past rules adds to the regulatory burden that is by now hardly manageable and can impinge on legal certainty. Concretely, EBIC regrets in particular that the EP's draft report proposes to ratify the Council's decision to extend beyond 2009 the transitional floors calculated according to the Basel I methodology (Amendments 13, 31, 32). EBIC believes that this decision, which has been taken without any consultation with the stakeholders, is not an appropriate measure for ensuring better capital adequacy. As acknowledged by CEBS in its end-2009 stress testing exercise, the pressure exerted by the financial markets has already resulted in banks holding capital levels that are much higher than those required by the Basel I floors. The only practical effects of such prolongation would be additional costs for the banking industry (as it is particularly burdensome for institutions to continue calculating capital requirements according to two different methodologies whilst being obliged to implement a whole range of new prudential rules) and a blow to the legal certainty principle. Taking into consideration also the declarations by Spain and France accompanying the Council compromise on the Commission's proposal for CRD 3, EBIC invites you to refrain from amending the current transitory provisions and to not automatically transpose the Basel Committee's decision to extend Basel I floors into EU legislation.

Concerns related to early implementation of higher capital requirements

The CRD 3 proposals will lead to significantly higher capital charges for EU financial institutions. Much of the additional capital would need to be held against legacy positions which are illiquid and difficult to unwind quickly. Early implementation of these rules – end-2010, as currently envisaged (pages 55-56 of the EP draft report) – is likely to put pressure on banks to deleverage and force them to sell parts of their portfolios at considerable losses, thereby triggering adverse effects on banks' lending capacity. Furthermore, these additional charges for the trading book and resecuritisation positions imposed on banks have a broader impact on the cost of doing business in Europe and are likely to place European banks at a considerable competitive disadvantage compared to their counterparts in countries outside the EU.

For these reasons, EBIC urges the European Parliament to make sure that the burdensome capital requirements proposed in CRD 3 are introduced in the EU only simultaneously to the implementation of the corresponding Basel Committee's rules in non-EU countries (especially in the US). Hence, the implementation date of the CRD 3 should be such that it does not put at disadvantage EU banks.

Furthermore, in line with the current article 122a of the CRD, EBIC strongly recommends introducing in the CRD 3 a grandfathering clause for existing re-securitisation positions. Consequently, in accordance with the already enacted grandfathering clause in Article 122a of CRD 2, the higher risk weights should only be applicable for re-securitisations issued after 31 December 2010. Regarding positions in existing re-securitisations, the new risk weights shall apply from 31 December 2014 in case new underlying exposures are

added after that date. The grandfathering clause should cover at least all re-securitisation positions held by a bank at the date the new provisions become effective.

Concerns with proposed rules for highly complex resecuritisations

Contrary to the Council compromise on the proposal for CRD 3, the EP draft report does not propose to delete the provision to deduct highly complex resecuritisation exposures from capital (Amendment 19).

EBIC strongly supports the Council's decision to delete Article 122b of the Commission's proposal. Requiring that credit institutions apply a 1250 % risk weight to positions in highly complex re-securitisations is unreasonable given the requirements already set through Article 122a. At the same time, the proposal is particularly imprecise given the absence of any indication as to what constitutes a "highly complex resecuritisation".

From a risk perspective, it is sufficient to treat complex resecuritisations according to the general rules for resecuritisations. According to Article 122a, paragraph 4 of CRD 2, investors must carry out extensive due diligence for analysing the risk characteristics of securitisation positions. In addition, the obligation to monitor risk positions as outlined in paragraph 5 explicitly specifies that for re-securitisations the exposures underlying securitised securitisation positions must be monitored. Banks that are able to meet the aforementioned qualitative requirements of Article 122a should be allowed to use the risk weights for re-securitisation exposures. Banks that are not able to meet the requirements would have to use an additional risk weight of no less than 250%, which is severe enough. Consequently, EBIC suggests that the proposals in Article 122b be deleted altogether.

Furthermore EBIC would like to draw attention to the fact that the proposed rule can in any case not be applied as long as the object to which it should apply was not clearly defined. Indeed, the Commission proposal does not give a definition of "highly complex resecuritisations", and the EP draft report proposes that such definition be adopted by means of delegated acts. However, EBIC would like to highlight that "delegated acts" under article 290 of the Treaty on the Functioning of the European Union are non-legislative acts that can only supplement or amend parts of a legislative act which are not considered essential. Yet, the very definition of the object of a rule (as in the present case) is a key element of that legislative act and should be dealt with exclusively in the legislative act, adopted according to the ordinary legislative procedure. Deciding to the contrary and leaving the definition of highly complex securitisations to be adopted by means of delegated acts would set a dangerous precedent, that risks limiting the powers of the European Parliament and the confidence of the end-users of rules as to the legislative process altogether. For these reasons we urge the European Parliament - should it decide to retain the proposals for a new Article 122b – to decide also on the definition of the object of such new rule. Hence the definition of "highly complex securitisations" should not be set through a delegated act, but should be part of the legislative measure itself.

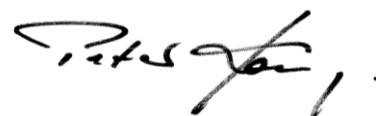
EBIC stands ready to discuss this matter further with you. The EBIC Secretariat remains at your disposal for any questions you may have in relation to these issues and would be glad to meet with you personally in order to explain our main concerns.

Yours sincerely,



Gerhard HOFMANN

Chair EBIC



Peter KONESNY

Chair EBIC Working Group on Supervisory Practices