



**Gunnar Hokmark**

Parlement européen

Bât. Altiero Spinelli

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B-1047 Bruxelles/Brussel

20 March 2015

Dear Mr Hokmark,

**Subject: ECON Committee discussions on compromise on the Bank Structural Reform file**

I am writing to you in order to express my concerns on the ongoing discussions within the ECON Committee to find a compromise Bank Structural Reform file. We would like to stress that in our view, the bank structural reform should not restrict companies' access to the services needed by them in order to conduct their business and specifically not threaten or make more onerous non-financial companies' access to banking services, at a time when investment and growth are so badly needed.

We have two main areas of concern:

**1. Restrictions to non-financial companies' ability to mitigate risk**

We have strong concerns regarding Article 12 of the Commission's proposal, which would prohibit the core credit institution (CCI) from offering non-centrally cleared OTC derivatives to their non-financial clients. Such a move of all OTC derivative transactions to the trading unit would seriously impact non-financial companies' ability to hedge their commercial risk exposures.

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We would expect the trading unit to be of lesser credit quality and possibly less stable than the CCIs; this would increase risk in the financial system overall and for non-financial companies in particular.

Non-financial companies, as end-users, use OTC derivatives to hedge the impact of movements in currencies, interest rates, commodity and other prices, not to speculate. The derivative products that non-financial companies typically need for their risk mitigation are not eligible for central clearing as they need to be tailored in order to adequately cover the business risk. The access of non-financial companies to OTC derivative products with no obligation to centrally clear must be maintained as it is beneficial to the economy and reduces systemic risk instead of increasing it. This principle was recognised in the EMIR legislation.

We would like to underline that we would not expect the financial institutions that will *not* be subject to this Regulation to be able to offer the types of hedging products needed by all non-financial counterparties.

We would also like to point out the following issues concerning the compromises that we understand are currently being discussed by the ECON Committee:

- Proposed amendments to Article 11 would allow financial institutions to use OTC derivatives in order to hedge their exposures, but the same is not allowed for non-financial counterparties. We do not see the logic of such position and we would urge the ECON Committee to consider the needs of non-financial companies also.
- We understand that some of the amendments intend that the CCI should be able to offer OTC derivatives to its non-financial clients but only when acting as an agent for a third party. We believe that this is not sufficient for non-financial counterparties to have access to reasonably priced and tailor-made OTC hedges as it would likely seriously restrict the offer of OTC derivatives by CCIs. The approach also raises serious issues of risk assessment for the non-financial companies.
- We believe that Article 11 should not limit the type of derivative instruments allowed as this would again limit non-financial companies' ability to find appropriate hedges. Furthermore, the proposed deletion of the Commission's ability to review the list of instruments would make this provision even more inflexible to the detriment of real economy end-users.

**Therefore we would propose the following amendment to Article 12:**

1. Without prejudice to the decision of the competent authority referred to in Article 10(3), a core credit institution may also sell ~~interest rate derivatives, foreign exchange derivatives, credit derivatives, emission allowances derivatives and commodity derivatives~~ eligible for central counterparty clearing and over-the-counter derivatives which are subject to the exemption laid down in Regulation 648/2012 Article 10(3) and emission allowances to its non-financial clients, to financial entities referred to in the second and third indents of point (19) of Article 5, to insurance undertakings and to institutions providing for occupational retirement benefits and to institutions belonging to the same institutional protection scheme (IPS) as referred to in Article

113(7) of Regulation (EU) No 575/2013, ~~and may engage in offsetting transactions to lay off risk in such sales when the sole purpose\* of the sale is to hedge interest rate risk, foreign exchange risk, credit risk, commodity risk or emissions allowance risk.~~

## **2. Restrictions to market making**

Another area of concern for us is the intention to restrict market-making activities, which we believe is in complete contradiction to the stated aim to create a Capital Markets Union and to improve access to and the depth of capital markets in Europe. Market-making benefits the real economy in that it supports with essential liquidity the issuance of equity and bonds by non-financial companies. We would urge the ECON Committee to amend Article 8 in a way that would allow market-making activities to be conducted by the CCI's.

We believe that Europe needs a framework of financial regulation that creates a financial system that helps companies to conduct their business, rather than one that makes it more difficult. With this in mind, we would urge you to take the points made above into consideration when discussing the ECON compromise text on this file. We remain at your disposal for any questions.

Yours sincerely,

A handwritten signature in black ink, reading "Richard Raeburn". The signature is written in a cursive, flowing style.

Richard Raeburn  
Chair – European Association of Corporate Treasurers