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THE DIRECTOR GENERAL

Mr Valdis Dombrovskis
Vice-President
Euro & Social Dialogue
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

2 October 2017

Dear Vice-President,

Capital Requirements

As you know, BusinessEurope supported reinforcing prudential rules and strengthening supervision as financial market stability is fundamental for the economy and European companies. The new rules have restored confidence in financial institutions and made them more resilient. At the same time, bank lending came under pressure and there is a significant risk that as economic growth picks up banks will be unable to meet companies' funding requirements on the necessary scale. Future work on the capital requirement rules should therefore ensure that the legislation functions effectively, encouraging growth and preventing damage to businesses in the wider economy.

For this reason, we have expressed concerns that additional tightening of prudential rules should not further increase financing problems. In this context, we referred in particular to regulatory initiatives initiated by the Basel Committee regarding the revision of the standardised approach for credit risk, the use of internal model approaches, the standardised measurement approach for operational risk, and also the Net Stable Funding Ratio (NSFR).

We also emphasised the importance of the SME Supporting Factor for the financing of smaller and medium-sized companies. New capital requirements should also not discourage the use of hedging instruments and reduce their availability, neutralising the relief provided by the European Market Infrastructure Regulation (EMIR). And, in the area of trade finance, with mostly short-term, uncommitted and trade-related finance, new rules should not reduce the availability of funding.

BusinessEurope appreciates it that you have considered our concerns when proposing amendments to the capital requirement rules (CRD5/CRR2) and when discussing international prudential standards for the banking sector in the context of the Basel Committee. We are particularly pleased with your proposal regarding the SME Supporting Factor and the deviation from the Basel standard on the NSFR. Having said this, we still have some concerns regarding some proposals to amend the Directive and Regulation.

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In 2013, when the current rules were negotiated, the legislator recognized the specifics of the use of derivatives by non-financial companies in order to avoid negative side effects on business operations by exempting uncollateralised exposures from derivatives with non-financial counterparties used for hedging purposes from the own funds requirements for credit valuation risks (CVA risks). The CVA risk exemption could however be undermined by the European Banking Authority and/or national competent authorities due to amendments to Article 104ff CRD that would change the nature of the supervisory review and evaluation process increasing the powers of these authorities. It should thus be clearly stated that this is not intended by the legislator.

Also, current proposals regarding the NSFR and gross derivative liabilities could still have a negative impact on derivatives used by non-financial companies to hedge risks as they will make long-term financing of companies more costly and difficult to obtain due to constraints of maturity transformation. Increased costs are likely to be passed on to end users, discouraging the use of hedging instruments and reducing their availability. This should be carefully analysed before finalising new requirements. We specifically do not understand the rationale behind the proposed 10% capital surcharge of uncollateralised derivatives with non-financials, as these typically relate to corporate hedging transactions (please see our comments on the CVA risks above).

In addition, properties such as ships, aircrafts and helicopters, should be treated more favourably. These assets are very comparable to residential and commercial buildings in terms of market value and liquidity and provide sound collateral. They should thus be treated equally in the context of Articles 124 and 125 CRR.

Moreover, salary and pension secured loans should have a favourable prudential treatment in the context of Article 123 CRR. Similarly, in the context of Article 125 CRR, exposures fully and completely secured by mortgages on residential property should have a more risk-sensitive treatment since the current flat rate of 35% RW does not capture the appropriate risk-sensitivity of these exposures. In the context of Article 181 CRR, the effect of the sales of non-performing loans on the loss given default (LGD) should be sterilised, or at least mitigated, in order to avoid any possible disincentive for banks to sell these loans.

Lastly, regarding export finance activities, export credits in currencies other than Euro should not be subjected to different prudential treatments. The currency criteria for EU Export Credit Agencies are not relevant as the majority of international trade conducted by EU banks is in USD and such a restriction would penalise EU companies.

We hope that you share these concerns and remain at your disposal should you wish to discuss this further.

Yours sincerely,

Markus J. Beyrer