BCC CREDITO COOPERATIVO Federcasse

Senato della Repubblica

Audizione presso la Commissione

Finanze e Tesoro

Indagine conoscitiva
sulle condizioni del sistema bancario
e finanziario italiano
e la tutela del risparmio

Roma, 8 marzo 2016

Ringrazio la Commissione ed in particolare il Presidente Marino per la possibilità di portare il contributo di riflessione del Credito Cooperativo nell'ambito di questa *Indagine conoscitiva*.

Mi soffermerò essenzialmente su **due temi**, proponendo osservazioni su:

1) un **primo "bilancio" dell'Unione Bancaria e le sue prospettive** sia in termini di indispensabile cambiamento dell'approccio di strategia politica e normativa sia in termini di evidenze prioritarie;
2) la **riforma del Credito Cooperativo** contenuta nel Decreto legge n. 18/2016, attualmente in fase di conversione.

Prima di procedere, desidero però ringraziare il Presidente Marino e questa Commissione per almeno altre due ragioni. La prima, per aver promosso – coinvolgendo anche la Commissione Finanze della Camera – il **Seminario istituzionale** del 15 ottobre scorso nel corso del quale è stata **presentata e discussa** nella più appropriata delle sedi – ovvero il Parlamento – la nostra proposta di Autoriforma del Credito Cooperativo.

La seconda ragione è la **forte sensibilità** che la Commissione VI ha dimostrato rispetto alle istanze che Federcasse ha formulato nell'interesse dell'economia italiana nel corso dell'iter di approvazione della **Legge di Delegazione Europea 2014**. Fissando i princìpi della delega al Governo per il recepimento in Italia di delicatissime direttive, quali in particolare, la **BRRD** e la **DGSD**, questa Commissione ha fatto proprie una serie di nostre riflessioni di modifica del testo originario.

1. L'Unione Bancaria. Primo bilancio e prospettive. Una considerazione di approccio di strategia politico-normativa e quattro considerazioni di merito.

L'**Unione Bancaria è oggi una realtà**. Ed ha inaugurato, davvero, una nuova éra non solo per tutte le banche europee, ma anche per l'economia e la vita di cittadini e imprese europei.

Il suo progetto è stato scritto per completare l'Unione Economica e Monetaria e, dopo i fatti del 2007-2008, è stata realizzata con particolare urgenza per esprimere la capacità dell'eurozona di dare risposta alla crisi globale, concorrendo ad assicurare qualità crescente del governo societario e comuni e più elevati requisiti prudenziali in materia di capitale e di liquidità, nonché per

prevenire e gestire le situazioni di crisi con il contributo degli intermediari e senza oneri per i contribuenti.

Il primo pilastro dell'Unione Bancaria, il meccanismo di vigilanza unico sulla base del *Single rule book* (CRD IV e CRR), è stato avviato dal novembre 2014 e dal 1° gennaio 2016 le Autorità nazionali di vigilanza si sono conformate alle linee guida dell'EBA sulle procedure e le metodologie per il processo di supervisione e valutazione prudenziale, lo SREP, con l'obiettivo di attenuare le distorsioni ascrivibili ad approcci di supervisione eterogenei e di favorire la messa a fattor comune delle migliori prassi di vigilanza.

Sempre dal 1° gennaio 2016 è divenuto pienamente operativo anche il secondo pilastro dell'Unione, il meccanismo di risoluzione unico delle crisi bancarie, figlio della BRRD (Banks Recovery and Resolution Directive), direttiva che determina una rivoluzione copernicana, riassumibile nel concetto "dal salvataggio delle banche con risorse esterne alle stesse (*bail-out*) al salvataggio delle banche con risorse interne (*bail-in*)". La crisi di una banca dovrà, in altre parole, essere risolta utilizzando in via prioritaria le risorse finanziarie interne alle Banche, non gravando sui bilanci degli Stati.

Terzo pilastro dell'Unione Bancaria, la direttiva 2014/49/UE relativa al sistema di garanzia dei depositi (c.d. DGS), è stata recepita in via definitiva il 10 febbraio scorso dal Consiglio dei Ministri.

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Vorrei proporre in questa sede:

- un **primo "bilancio" di sintesi dell'Unione Bancaria**;
- **una considerazione e una proposta** in termini di approccio di strategia politico-normativa alla base del presente e del futuro dell'Unione Bancaria;
- **quattro considerazioni** di merito.

1.1 Prima analisi di impatto a 26 mesi dall'avvio dell'Unione Bancaria e a 15 mesi dall'introduzione del Meccanismo di vigilanza unica.

A poco più di due anni dall'avvio dell'Unione Bancaria, il problema di fondo per le piccole banche, ovvero la vera posta in gioco, riguarda **l'effettività del principio di proporzionalità**. Ed essa si può cogliere solo **tenendo**

debitamente conto dell'effetto congiunto dei singoli blocchi che costituiscono l'intero apparato normativo dell'Unione Bancaria, dunque in una prospettiva che potremmo definire *"sistemica"* o *"olistica"*.
La questione è cruciale e merita un approfondimento seppur sintetico.

Da una parte, con il primo pilastro fondato sulla CRR/CRD IV, si realizza un inasprimento dei requisiti prudenziali e di *governance* con l'obiettivo di abbassare la probabilità di fallimento delle singole banche aumentandone la resilienza e, con ciò, quella del sistema nel suo complesso. Dall'altra parte, con il secondo ed il terzo pilastro che stabiliscono, rispettivamente, le nuove regole per la prevenzione e la gestione delle crisi bancarie (BRRD/SRM) e il regime di tutela dei depositi (DGS/bozza di regolamento EDIS sul fondo di garanzia unico europeo), si intende gestire e risolvere le crisi aziendali utilizzando in via prioritaria come già detto, risorse interne alle stesse banche.

L'effetto congiunto dell'apparato normativo dell'Unione Bancaria non è una mera sommatoria degli effetti dei singoli blocchi. Il problema di fondo è che esiste un *trade-off* fra l'obiettivo del primo pilastro e gli obiettivi del secondo e terzo pilastro, che non si possono conseguire allo stesso tempo, per tutte le banche, con la stessa intensità o misura, senza impattare profondamente e negativamente sulla natura e sul ruolo delle banche nell'economia. Ed è nell'opportuno bilanciamento fra l'uno e l'altro obiettivo che si gioca l'effettività della proporzionalità.
Allo stato attuale, il quadro regolamentare e l'approccio di supervisione non realizzano tale bilanciamento perché intendono conseguire con la stessa intensità la resilienza delle singole banche, quella del sistema nel suo complesso e la minimizzazione del costo sociale complessivo in caso di fallimento di una banca. Ed è questa la ragione per cui l'effetto congiunto dei tre blocchi normativi dell'Unione Bancaria è sproporzionato sulle piccole banche rispetto al loro peso sistemico. Nel complesso, **le piccole banche pagano di più in tutti i termini, tenuto conto del loro ruolo nel finanziamento dell'economia e rispetto all'entità del rischio al quale espongono il sistema in quanto tale.**

Perciò, in presenza - a regime - di Fondi unici europei (SRF ed EDIS), **l'effettività della proporzionalità si ha non prendendo in considerazione il rischio specifico** (idiosincratico, prevalente in SRM/SRF), ma il **rischio sistemico.** Tale orientamento di fondo **dovrebbe prevalere in EDIS, aspettando la revisione del SRF e auspicando che aumenti la correzione per il rischio sistemico.**

Se non sarà la ***prospettiva sistemica*** a guidare la proporzionalità, l'approccio micro, di volta in volta focalizzato su singole norme, non riuscirà ad introdurre

misure significative di proporzionalità per riequilibrare il gioco competitivo fra piccole e grandi banche.

1.2. La posizione organica di Federcasse sull'Unione Bancaria in vista della revisione delle norme del 2017.

La Direzione Generale per i Servizi Finanziari della Commissione Europea, nell'ambito della sua attività di analisi e valutazione, ha lanciato ad ottobre 2015 una consultazione volta a raccogliere evidenze in merito all'impatto della rilevante mole di legislazione emanata negli ultimi anni.

La rilevazione era suddivisa in quattro aree tematiche volte ad evidenziare:

a) regole che possono **impattare sulla capacità di finanziare l'economia;**
b) norme che comportano **costi di conformità eccessivi;**
c) regole la cui **interazione comporta incoerenze o vuoti normativi;**
d) normative che possono avere **conseguenze non intenzionali.**

La metodologia di risposta suggerita dalla Commissione richiedeva di indicare non solo le problematiche ritenute rilevanti ma anche di portare **evidenze empiriche** a sostegno delle proprie motivazioni nonché di suggerire **eventuali correzioni.**

Il Credito Cooperativo ha risposto con un documento (*allegato 1*) che ha posto in evidenza in maniera documentata i molteplici elementi di criticità accumulati nella normativa europea emanata negli ultimi anni con particolare riferimento al principio di proporzionalità e al mantenimento della diversità nel mercato bancario europeo.

La platea dei rispondenti è stata vastissima. Per l'Italia, oltre a Federcasse, hanno risposto ABI (alla cui risposta Federcasse ha collaborato) e FeBAF (Abi, Ania, Assogestioni, Aifi, Assofiduciaria, Assoimmobiliare, Assoprevidenza e Assosim). A livello europeo, tutte le grandi banche e associazioni bancarie. Fra queste, sempre con la collaborazione di Federcasse, anche EACB, l'associazione europea che raggruppa tutte le banche cooperative dell'Unione e le rappresenta.

La risposta di Federcasse consta di **20 esempi concreti** (a loro volta scomposti e dettagliati in suggerimenti concreti di modifica delle norme) e attraversa la legislazione bancaria e finanziaria dell'UE nella sua interezza: dalle tematiche dei mercati (MIFID II, MAD, EMIR, Direttiva Prospetto, etc.) a quelle dell'Unione

Bancaria e della gestione delle crisi e tutela dei depositanti (SSM, BRRD, DGSD), passando per gli aspetti prudenziali, gli obblighi di reporting e i regimi di remunerazione (CRR/CRDIV), per le normative relative ai sistemi di pagamento (PSD2) e ai mutui residenziali (CARRP).

Tra le priorità indicate nella risposta di Federcasse, il fondamentale riferimento alla concreta applicazione del **principio di proporzionalità in tutta la legislazione**.

Mediante suggerimenti concreti e dati empirici, si è evidenziata la necessità di passare da una proporzionalità applicata caso per caso, in maniera non soddisfacente, a una proporzionalità strutturata: regole e soglie certe che indichino misure semplificate per gli intermediari meno complessi e di minori dimensioni, accompagnate dall'obbligo chiaro per le autorità competenti di darne applicazione non discrezionale.

Inoltre, è stata sottolineata con determinazione la richiesta circa la necessità di **confermare** lo *SMEs supporting factor*, di **calibrare** correttamente i regimi di remunerazione applicabili a dipendenti e dirigenti delle banche di limitata dimensione, di **ridurre** l'eccesso e la sovrapposizione di obblighi informativi sui prodotti di investimento, nonché la proliferazione di oneri non necessari contenuti in moltissimi atti normativi trasversali ai vari settori che minano la coerenza dell'impianto complessivo.

E' stata inoltre evidenziata la possibilità che recenti interventi normativi possano **spostare capitale e rischio di credito** dalla finanza regolamentata a soggetti non regolamentati, oltre che rappresentare una **causa di prociclicità**.

Sul tema della proporzionalità e sullo SMEs Supporting Factor si tornerà più avanti.

1.3. Una considerazione di approccio di strategia politico-normativa. E una proposta: cambiarla radicalmente entro questa legislatura europea.

La **proporzionalità** correttamente intesa **è prima "a monte", poi "a valle"**

Diversamente da quanto deciso negli Stati Uniti e in altri Paesi di altri continenti con riferimento al recepimento delle normative sovranazionali (G20; Financial Stability Board, Comitato di Basilea), in Europa si è scelta la strada di una

regolamentazione *"one size fits all"*, omogenea per tutti gli intermediari, per la quale prevedere solo "ex post" eventuali attenuazioni per specifiche tipologie (in base alla dimensione e/o al modello operativo).

L'approccio statunitense è sinteticamente ben espresso in un passaggio dell'intervento della Presidente della US Federal Reserve, Janet Yellen, al Congresso degli Stati Uniti tenuto lo scorso 4 novembre: *"Fra le lezioni che l'esperienza ha rafforzato vi è quella per cui, quando si tratta di regolamentazione bancaria e di supervisione,* ***una taglia unica non va bene per tutti****. Per* ***promuovere in modo efficace sicurezza e solidità e garantire il rispetto dei consumatori, senza creare oneri normativi ingiustificati, le regole e gli approcci di vigilanza dovrebbero essere disegnati in relazione ai diversi tipi di intermediari,*** *come nel caso delle banche di comunità".*

L'esigenza di proporzionalità nasce dall'esigenza di **efficienza del processo normativo** (valutazione del suo impatto rispetto ai risultati). Per questo occorre che parta "dal concepimento" della normativa, non dalla necessità di trovarne adattamenti "ex post", una volta che questa sia definita.

Pertanto riteniamo che i Parlamenti Nazionali e quello Europeo possano farsi portatori di una richiesta determinata di **"proporzionalità strutturata"**, superando l'attuale approccio di *"proporzionalità caso per caso"*. **La proporzionalità merita un approccio non occasionale, non negoziato di volta in volta.**

Particolarmente significativo, tra i fatti più recenti, è che i **Governi tedesco, britannico e olandese abbiano elaborato e presentato lo scorso gennaio in Ecofin un "nonpaper", chiedendo l'applicazione di una proporzionalità strutturata nella produzione normativa bancaria dell'Unione Europea facendo proprie le tesi che le banche cooperative europee (tramite la propria Associazione, la *European Association of Co-operative Banks*-EACB) hanno da sempre sostenuto e argomentato. Ad oggi, non risulta che il Governo italiano abbia aderito a questa linea politica qualificante, così come Federcasse ha chiesto. Il Parlamento può valutare l'opportunità di un indirizzo in tal senso.** *(allegato 2).*

1.4. Quattro considerazioni di merito.

1.4.1. Prima considerazione: lo strabismo delle regole tra stabilità e crescita.

Abbiamo vissuto in questi anni una **evidente discrasia tra politica monetaria espansiva sostenuta dalla BCE e normativa prudenziale restrittiva** che, prendendo come parametro il livello di patrimonializzazione rispetto agli attivi a rischio (con una ponderazione focalizzata sui crediti), ha reso (e sta rendendo) sempre più difficile il sostegno all'economia reale e alla crescita.

Con il processo di regolamentazione seguito alla "grande crisi", in sostanza, si è prodotto anche un negativo effetto di ***credit crunch normativo*** che rischia di venire acuito da ulteriori misure decise "a tavolino" (es. applicazione di maggiori ponderazioni o rischi di perdita di misure di riequilibrio, come l'*SMEs supporting factor* di cui si dirà oltre).

E' accaduto qualcosa di molto diverso dall'altra parte dell'Atlantico dove, accanto ad una rapida e rigorosa revisione di leggi e regole sul sistema finanziario, si sono realizzate immediatamente interventi di sostegno per il risanamento e consolidamento delle banche con l'obiettivo di far ripartire il credito complessivo all'economia. E si è operato principalmente attivando idonei meccanismi di cartolarizzazione dei crediti, sia *non performing* sia *in bonis* (con garanzie di agenzie pubbliche).

1.4.2. Seconda osservazione: perché l'SMEs Supporting factor deve essere confermato e ampliato.

La norma sullo SME Supporting Factor – che consente di ottenere un assorbimento di capitale delle banche meno oneroso a fronte di finanziamenti dalle stesse erogati alle PMI - rappresenta una "conquista" del nostro paese che l'ha proposta e sostenuta in ambito europeo con un'emblematica (e purtroppo rara) azione "sistemica" (Associazioni delle imprese e Associazioni delle banche col supporto di Goiverno e Parlamento) e ne ha promosso l'inserimento nell'ambito della definitiva emanazione del pacchetto che recepisce nell'Unione Europea quanto previsto da Basilea 3 (CRDIV/CRR): in particolare, lo SMEs Supporting Factor è oggi presente all'art. 501 (1) del CRR, Regolamento n. 575/2013).

Proprio in tale contesto però, lo stesso legislatore europeo si è riservato di valutare in un momento successivo, i concreti effetti prodotti della norma, al fine di valutarne la permanenza. In questo senso ha disposto che, entro il 2 gennaio 2017, la Commissione deve presentare una relazione sull'impatto dei requisiti in materia di fondi propri fissati dal Regolamento CRR, sui prestiti alle PMI e alle

persone fisiche, e deve trasmettere tale relazione al Parlamento europeo e al Consiglio, corredata – se del caso - da una proposta legislativa.

In relazione a ciò, nel corso del 2015, prima l'EBA poi la Commissione UE hanno prodotto propri documenti che hanno posto in consultazione pubblica. Gli esiti saranno tenuti in considerazione per la preparazione del Rapporto finale alla Commissione europea, che sarà redatto a breve.

In tal senso, merita una speciale sottolineatura una presa di posizione da parte di tutti i principali schieramenti politici presenti nel Parlamento Europeo assunta lo scorso 23 febbraio a favore proprio della conferma e dell'ampliamento dello SMEs Supporting Factor grazie all'iniziativa promossa dal Vice Presidente del Parlamento Europeo, on. Antonio Tajani, e dal Presidente del Comitato Affari Economici e Finanziari dello stesso Parlamento, on. Roberto Gualtieri (*allegato n.3*). La **nostra proposta a questa Commissione** pertanto **è di assumere iniziative a livello nazionale che impegnino il Governo Italiano nella stessa direzione e, a livello europeo, azioni convergenti sia col Parlamento Europeo sia con i Parlamenti di altri grandi Paesi fondatori.**

Da alcuni studi anche da noi effettuati è emerso che dopo l'introduzione dello SME Supporting factor, sono migliorati sia la disponibilità sia il costo del credito per le PMI. Infatti, oltre ad una riduzione dei tassi, il trend di crescita dell'erogazione del credito nei confronti delle PMI è nettamente aumentato rispetto a quello delle imprese di maggiori dimensioni. Si è registrato inoltre un minore impatto sui c.d. RWA (risk-weighted assets) che **si è tradotto in un aumento medio del valore del CET1 dello 0,8%.**

L'introduzione dello *SME Supporting factor* ha portato probabilmente indubbi vantaggi a tutti gli intermediari europei, ma certamente ancora di più per quelli italiani in quanto operano in un'economia nella quale il peso assoluto e relativo delle PMI è decisamente maggiore rispetto a quello di altri importanti Paesi europei. Ciò vale a maggior ragione per le BCC che si rivolgono – nel finanziamento alle aziende - pressoché esclusivamente alle piccole e medie imprese, con quote di mercato che ricordiamo dettagliatamente nell'*Appendice*. Il *Supporting Factor* ha generato per le BCC **la "liberazione" di capitale regolamentare per un valore che equivale a circa 500 milioni di euro.**

Il fattore di supporto per le piccole e medie imprese assume quindi, particolare rilevanza per il nostro Paese, dove si stima che la sua mancata conferma metterebbe in discussione – in termini di volumi e condizioni – un ammontare di

prestiti pari a circa 20 miliardi di euro, a scapito principalmente del nostro sistema produttivo, che perderebbe così un cospicuo sostegno utile alla ripresa.

Detta **misura, dunque va confermata e possibilmente ampliata.**

Inoltre chiediamo ancora una volta che si possa avviare un esperimento che estenda – dal 2018 in poi – anche alle imprese sociali il Supporting Factor con una specifica misura - che abbiamo illustrato anche in sede di Unione Europea – che potremmo chiamare *Social Enterprise Supporting Factor*: in sostanza si chiede di inserire un fattore di supporto ancora più vantaggioso (ad esempio dello 0,6%, a fronte dello SMEs Supporting Factor che oggi prevede per le Pmi un fattore di ponderazione dello 0,7619%) per le imprese sociali di piccola e media dimensione.

Dette imprese sono fondamentali per le politiche di inclusione e di erogazione di servizi di welfare, soprattutto nelle comunità locali, a fronte dell'arretramento generalizzato dello Stato sociale e risultano – almeno nell'esperienza delle BCC – mediamente meno rischiose di quelle di analoga dimensione operanti in altri settori (*vedi Appendice, pagina 23*). Tale misura, sarebbe naturalmente a costo zero per le finanze pubbliche.

1.4.3. Terza osservazione: occorre evitare il rischio che Basilea 4 arrivi a "gelare" la timida ripresa e a ridurre strutturalmente il credito bancario all'economia reale.

Basilea 1 era scritta in 35 pagine, *Basilea* 2 in 347 pagine, per *Basilea 3* siamo arrivati a 2.000 pagine più altre 2.500 di standard tecnici. Standard, appunto, perché quello che era **nato come "Accordo di Basilea" è divenuto nel tempo un enciclopedico set di standard sempre più complessi.**

Ma i timori per *Basilea 4* non sono soltanto relativi ai pesanti oneri amministrativi derivanti dall'adeguamento ad una nuova ulteriore normativa. Si riferiscono anche (soprattutto) al rischio che gli standard prevedano **un assorbimento patrimoniale per i titoli di Stato** e che **si esageri nel rendere più stringenti i criteri di valutazione del credito deteriorato**.

Il Credito Cooperativo detiene nel proprio portafoglio titoli di stato italiani per circa l'85% del totale dei titoli. **L'introduzione di una norma che imponga alle banche un assorbimento patrimoniale inversamente proporzionale al rating dello Stato emittente è una misura inaccettabile sotto il profilo sia**

politico sia di sostenibilità tecnica con imprevedibili ripercussioni anche sugli equilibri di finanza pubblica e sul rischio di una crescente dipendenza del bilancio dello Stato da soggetti esterni.

L'appesantimento delle esigenze di capitale per le banche avrebbe il deleterio effetto di "gelare" la ripresa. Ne pagherebbero il prezzo soprattutto le piccole e medie imprese. E l'Italia è lo Stato che vanta il maggior numero di microimprese e PMI nell'Unione Europea. Abbiamo 3,3 milioni di imprese individuali e oltre 900 mila società di persone.

Va notato, infine, che l'intero impianto degli standard di Basilea poggia sul principio del capitale contabile. Ma in Europa manca un linguaggio contabile unico, gli IAS sono stati un pesante adempimento che ha coinvolto anche le piccole banche, ma non in tutti gli Stati; **dovrebbe pertanto essere proprio l'unificazione del linguaggio contabile la preoccupazione primaria della Commissione UE**, piuttosto che quella di aumentare e inasprire i filtri di assorbimento di capitale.

1.4.4. Quarta osservazione: gestione delle crisi e tutela del risparmio

Come noto, l'interpretazione della DG Concorrenza è che, sebbene i fondi di garanzia dei depositanti (DGS) siano alimentati esclusivamente con risorse delle banche, essi possano avere la veste di fondi pubblici, in quanto previsti per legge e sottoposti all'approvazione dell'Organo di Vigilanza per gli interventi.

Se ne è avuto un saggio eloquente nella vicenda della risoluzione delle 4 banche (tre Spa ed una Popolare) deliberata lo scorso 22 novembre, nella quale – data l'impossibilità di intervenire attraverso il Fondo Interbancario di Tutela dei Depositanti appunto in ragione della rigida interpretazione della DG Concorrenza della Commissione Europea in materia di "aiuti di stato" – è stato applicato il cosiddetto principio del "burden sharing", imponendo il concorso al sostegno delle perdite in primo luogo a carico di azionisti e obbligazionisti subordinati.

L'opzione della risoluzione è parsa alle Autorità l'unica possibile *"per la migliore tutela dei depositanti e degli investitori e al fine di evitare effetti negativi sulla stabilità finanziaria ed economica"*, come precisato nella premessa del provvedimento, dopo che almeno altre due ipotesi di soluzione non avevano potuto realizzarsi o perché non autorizzate dalla Commissione Europea o perché

non rese possibili dall'adesione, volontaria e tempestiva, di tutte le 208 banche aderenti al Fondo Interbancario di Tutela dei Depositi.

La conseguenza dell'insuccesso di queste ipotesi è stata particolarmente gravosa, in termini generali e particolari:

b) in termini generali per il **costo dell'operazione di salvataggio, molto maggiore** di quello che si sarebbe avuto in caso dell'utilizzo dello strumento DGS (imposizione svalutazione delle sofferenze al presunto prezzo di realizzo) e per il **pesante impatto sui risparmiatori**
c) in termini particolari per le BCC, il non potersi sottrarre al richiamo obbligatorio di fondi (225 milioni di euro l'impatto dei contributi richiesti), **a fronte della prospettiva dell'incertezza di poter beneficiare dell'intervento dello stesso strumento in caso di necessità (intervento subordinato, come noto, al criterio "dell'interesse pubblico").**

Sulla scorta di tali considerazioni in molti negli ultimi tempi, anche la stessa Banca d'Italia, si sono espressi circa l'opportunità di **prevedere una "moratoria"** nell'entrata in vigore della normativa sul risanamento e risoluzione delle crisi.

La scelta interpretativa della normativa sugli aiuti di Stato adottata dalla Commissione Europea ha avuto impatto anche sulla **soluzione della crisi di tre BCC in amministrazione straordinaria** (Banca Padovana, Banca Irpina e Banca Brutia) per le quali non si è potuto far ricorso alla funzione svolta dal Fondo di Garanzia dei Depositanti (FGD).

A fronte della situazione di insostenibile incertezza del diritto, Federcasse ha immediatamente e responsabilmente promosso una serie di iniziative sia di carattere istituzionale sia di natura progettuale, **deliberando un intervento di carattere volontario, sostitutivo di quello che avrebbe effettuato il FGD.**

Il **Credito Cooperativo**, quindi, **si è fatto carico**, come sempre accaduto, di **risolvere le proprie criticità facendo ricorso esclusivamente a risorse interne, senza alcun esborso né per i contribuenti, né per le altre banche e tenendo indenni anche i portatori di obbligazioni subordinate, che sono stati interamente tutelati.**

Abbiamo pertanto rappresentato l'assoluta necessità di **ottenere un quadro regolamentare certo e definito**, un sistema di relazioni inter-istituzionali **trasparente** e non fondato su prassi operative stabilite unilateralmente da strutture tecniche degli Organismi europei.

Chiediamo al Governo Italiano di prevedere **misure che favoriscano l'attuazione degli schemi volontari di intervento nelle situazioni di crisi bancarie**, in modo da assicurarne la sostanziale neutralità rispetto al sistema obbligatorio e prevedendo la deducibilità fiscale dei costi connessi alle contribuzioni, agli interventi e al funzionamento di detti schemi volontari, **anche se non incardinati all'interno di Fondi obbligatori**.

Nel passato recente, i Fondi di garanzia dei depositi, i DGS, (specialmente quelli di carattere settoriale, come il FGD del Credito Cooperativo), hanno svolto un ruolo molto rilevante nella soluzione di crisi bancarie, assicurando la prevenzione delle situazioni di difficoltà e la soluzione delle crisi senza giungere al rimborso dei depositanti, minimizzando così l'impatto sulle relazioni creditizie e riducendo il costo complessivo delle risoluzioni.

La praticabilità di questa modalità di intervento (**seppure prevista anche nella direttiva DGS da poco recepita**) è ora effettivamente negata da parte della Commissione Europea.

Anche il testo EDIS prefigura sostanzialmente un meccanismo di protezione che si limita ad operare come *pay box* per il rimborso dei depositanti.

In questa situazione si rileva **una criticità** per le BCC che contribuiscono sia al Single Resolution Fund che ai fondi ex ante previsti dalla direttiva DGS. **Il costo complessivo previsto** per tali contribuzioni **è di circa 90-100 milioni l'anno** (escludendo le contribuzioni straordinarie come quelle effettuate a fine dicembre per il decreto cosiddetto "salvabanche"). **Questo ammontare appare straordinariamente elevato in confronto alla probabilità che le BCC possano causare degli esborsi ai due fondi** in quanto :

- essendo piccole banche potrebbero non passare il "test" dell'interesse pubblico (e quindi non accedere agli interventi del SRF, pur contribuendovi);
- nel caso di liquidazione, l'incentivo per il network a tutelare comunque la fiducia dei propri clienti tende a favorire interventi "volontari" che evitino il rimborso dei depositi (come si è verificato anche nel caso citato della soluzione della crisi delle tre BCC in amministrazione straordinaria).

Il Credito Cooperativo ha infatti costruito meccanismi di solidarietà interna che intervengono per prevenire o gestire le crisi riducendo praticamente a zero le probabilità di utilizzo di questi fondi, mantenendo peraltro inalterati, nel frattempo, ampi presidi per la prevenzione del *moral hazard* (grazie anche alla

tangibile contribuzione alla ristrutturazione aziendale da parte degli stakeholders e della Federazione Regionale di appartenenza).

Ad esempio, **tra il 1997 e il 2013**, il **FGD**, quale fondo obbligatorio settoriale del Credito Cooperativo a tutela dei depositanti delle BCC, **ha effettuato 26 interventi assimilabili ad attività di "risoluzione" con un costo di 159,9 milioni di euro (interamente a proprio carico)**. Al riguardo, appare evidente come questi oneri sostenuti nell'arco di 16 anni di attività per un numero elevato di interventi siano **largamente inferiori all'esborso che il Sistema del Credito Cooperativo è stato chiamato a sostenere per l'intervento del Fondo di risoluzione di fine anno 2015.**

Per tale ragione, si propone di **intervenire nella fase ascendente della normativa EDIS** con alcuni correttivi. In particolare:

- **al *recital 26*: prevedendo che i contributi all'EDIS siano calcolati tenendo conto della rilevanza sistemica o non sistemica dell'intermediario, dell'ammontare dei contributi versati al SRF e della partecipazione ad un meccanismo di solidarietà che abbia la funzione di minimizzazione dei rischi;**
- ***all'art. 74 (a), par. 5*: prevedendo che nel calcolo del rischio si tenga conto anche della partecipazione a schemi di solidarietà cooperativa.**

In sintesi, l'**Europa va ripensata anche a partire da un approccio nuovo, più ragionevole e realistico, nella produzione delle norme.**

C'è un'opportunità, annunciata dallo stesso Commissario Hill: l'occasione della **"manutenzione" del *single rule book***. Occorre fare in modo che si **traduca in un cambio concreto e coerente di scelta politica**.

2. La riorganizzazione dell'industria bancaria italiana. La Riforma del Credito Cooperativo.

Anche il Decreto legge 18/2016 per la parte di Riforma del Credito Cooperativo trova la sua origine all'interno dell'Unione Bancaria.

Il *focus* di tutta la regolamentazione bancaria succeduta alla "grande crisi", infatti, è come noto rappresentato dalla richiesta di rafforzamento patrimoniale. Nella percezione dei Regolatori, il *modello operativo* delle Banche di Credito Cooperativo (focalizzato sulla tipica attività al dettaglio e dunque particolarmente esposto all'andamento dell'economia reale nelle aree di riferimento), la *dimensione mediamente ridotta* delle singole banche ed il loro elevato numero (con effetti sui costi e sulla velocità di innovazione), gli *assetti organizzativi* del sistema, rappresentano – rispetto alle esigenze imposte dalla nuova normativa prudenziale – potenziali elementi di debolezza. Occorre, pertanto, intervenire per rispondere ad esigenze di competitività, redditività e stabilità del sistema nel suo complesso e di rafforzamento patrimoniale a livello di singole BCC, che potrebbero trovare ostacolo nella forma giuridica cooperativa mutualistica in quanto tale (caratterizzata dal principio del voto capitario e dal limite al possesso azionario da parte del singolo socio, sia esso persona fisica o persona giuridica).

In questa prospettiva, gli articoli 1 e 2 del decreto legge hanno nei fatti accolto gran parte proprio dell'impianto della proposta messa a punto nel corso del confronto tra Federcasse, Ministero dell'Economia e Banca d'Italia e mirano a comporre le istanze provenienti dalle Autorità – ovvero migliorare la *governance* del sistema BCC; allocare in modo più efficiente le risorse patrimoniali al suo interno; aprire il sistema del Credito Cooperativo ai capitali esterni al fine di consentire, in caso di necessità, la possibilità di una rapida patrimonializzazione – con gli obiettivi irrinunciabili per le BCC:

- valorizzare la mutualità e l'autonomia delle singole cooperative bancarie a mutualità prevalente in funzione della loro meritevolezza;
- semplificare le filiere ed accrescere l'efficienza;
- garantire l'unità del sistema.

Al fine di superare le potenziali criticità sopra descritte, preservando al contempo le caratteristiche proprie delle BCC e assicurandone lo sviluppo, il Decreto prevede che l'esercizio dell'attività bancaria in forma di Banca di Credito Cooperativo sia consentito solo alle imprese bancarie cooperative che

siano parte di un Gruppo Bancario Cooperativo, le cui caratteristiche dovevano tener conto di tre essenziali profili tecnici:

1. il profilo civilistico, necessario a costituire, per la prima volta in Italia, un Gruppo bancario (cooperativo) su base contrattuale;
2. il profilo prudenziale, per ottenere il riconoscimento dei benefici prudenziali applicabili ai gruppi bancari "tradizionali";
3. il profilo di consolidamento contabile, presupposto di trasparenza del legame fra le diverse entità e rappresentativo della situazione tecnica del Gruppo nel suo complesso.

Il provvedimento di Riforma del Credito Cooperativo emanato dal Governo ha tenuto, come detto, in gran parte conto dell'impianto della proposta di *Auto*riforma del sistema BCC.

Dei 10 punti[1] contenuti nella proposta del Credito Cooperativo (ai quali se ne era successivamente aggiunto uno ulteriore relativo alla gestione del periodo transitorio), la larga maggioranza risulta ripresa nel Decreto, in particolare con riferimento:

- *alla conferma e al rafforzamento della mutualità*: oltre a ribadire tutti i connotati della mutualità della BCC (in tema di ambito di operatività, prevalenza, rapporto con i soci, destinazione degli utili e conseguente disciplina fiscale), è stata accolta la richiesta di Federcasse di ampliare la possibilità di coinvolgimento dei soci con l'innalzamento del capitale detenibile dal socio (da 50 mila a 100 mila euro) e del numero minimo dei soci che ogni BCC deve avere (da 200 a 500, con un tempo di adeguamento, per questa norma, di 60 mesi) – cfr. modifiche agli 33 e 34 del TUB;
- *al controllo della Capogruppo del Gruppo Bancario Cooperativo in capo alle BCC*: è stata accolta la richiesta di Federcasse secondo la quale il capitale della Capogruppo deve essere detenuto in misura almeno maggioritaria dalle BCC – cfr. Nuovo Art. 37-bis comma 1 del TUB;

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1. Il socio della BCC al centro.
2. La BCC integrata in un Gruppo.
3. La previsione di garanzie in solido tra le BCC e la Capogruppo.
4. Il contratto di coesione e l'autonomia modulata delle BCC.
5. L'assetto e la *governance* della Capogruppo.
6. L'apertura a capitali esterni e l'indipendenza del Credito Cooperativo.
7. La dimensione territoriale.
8. I requisiti qualitativi e dimensionali del Gruppo.
9. L'unità del sistema BCC e le specificità delle Raiffeisen.
10. Le funzioni di garanzia e verifica delle finalità mutualistiche a componente associativa.

- *alla graduazione dei poteri della Capogruppo in relazione alla "meritevolezza" delle singole BCC*: è stata accolta la richiesta da noi formulata di ribadire la connessione con le finalità mutualistiche dei poteri della Capogruppo. Inoltre, fatto particolarmente rilevante e innovativo nel panorama giuridico europeo, è stata introdotta la previsione che i poteri della Capogruppo siano "proporzionati alla rischiosità delle banche aderenti" – cfr. nuovo Art. 37-bis comma 3 del TUB;
- *alla previsione di un requisito minimo di patrimonio della Capogruppo*: è stata accolta la richiesta formulata da Federcasse di prevedere una soglia minima patrimoniale per la Capogruppo, come elemento di solidità del Gruppo e all'insegna dell'unitarietà del sistema, confermata come scelta strategica di lungo periodo anche dalla comunicazione congiunta Federcasse, Iccrea Holding, Cassa Centrale Banca del 14 gennaio scorso – cfr. nuovo Art. 37-bis comma 1 del TUB;
- *al protagonismo delle BCC*: con l'attribuzione all'Assemblea dei soci delle singole Banche (fatte salve alcune eccezioni in relazione alla situazione aziendale) del potere di nominare i propri Organi sociali – cfr. conferma previsioni art. 33 comma 3 del TUB.

L'integrazione delle BCC in un Gruppo Bancario Cooperativo idoneo - per caratteristiche dimensionali, patrimoniali e organizzative - ad assicurare le condizioni di stabilità, sana e prudente gestione, efficienza e competitività delle singole aziende e del gruppo nel suo insieme, lungi dall'indebolire lo spirito mutualistico, consentirà alle BCC di operare in modo adeguato nelle nuove condizioni di contesto normativo e di mercato.

Alcuni aspetti della Riforma evidenziano delle criticità, sia su un piano giuridico, sia sotto il profilo squisitamente tecnico, rispetto all'attuazione concreta del disegno previsto e al conseguimento della finalità che esso si propone.

Si rappresentano in sintesi le principali questioni.

2.1 Possibilità di costituzione di Gruppi Bancari Cooperativi nelle regioni a statuto speciale e nelle provincie autonome

L'originario progetto di autoriforma, concordato con il MEF e la Banca d'Italia, prevedeva - coerentemente con le tutele costituzionali riconosciute (art. 116, primo e secondo comma della Costituzione) - di preservare le identità e le autonomie di specifici territori in cui sono presenti e attive, dal punto di vista dell'imprenditorialità nel settore bancario, particolari forme di coesione ed

organizzazione a livello territoriale previste normativamente, originate dal necessario riconoscimento a salvaguardia di peculiarità culturali e linguistiche.

A tali fini, il Progetto di autoriforma concordato con le Autorità attribuiva alla Banca d'Italia il potere di stabilire requisiti specifici al fine di favorire e **consentire la costituzione di Gruppi Bancari Cooperativi nelle regioni a statuto speciale e nelle provincie autonome** di cui all'articolo 116 della Costituzione, **costituiti tra banche aventi sede ed operanti nei medesimi ambiti territoriali.**

Federcasse chiede di ripristinare nel testo del provvedimento tale possibilità.

2.2. Clausola di non adesione e data di riferimento

L'attuale formulazione della "clausola di non adesione" al Gruppo Bancario Cooperativo da parte di una BCC ("*Nei casi di fusione e trasformazione previsti dall'articolo 36, nonché di cessione di rapporti giuridici in blocco e scissione da cui risulti una banca costituita in forma di società per azioni, restano fermi gli effetti di devoluzione del patrimonio stabiliti dall'articolo 17 della legge 23 dicembre 2000, n. 388. Tali effetti non si producono se la banca di credito cooperativo che effettua le operazioni di cui al periodo precedente ha un patrimonio netto superiore a duecento milioni di euro. In tal caso, le riserve sono affrancate corrispondendo all'erario un'imposta straordinaria pari al venti per cento della loro consistenza*") **necessita di essere rivista al fine di garantire la libertà di opzione nell'adesione al Gruppo, ma nel rispetto dei princìpi fondanti la mutualità e la cooperazione, evitando rischi di eccezioni sul piano della costituzionalità e della coerenza con le normative europee.**

Problema rilevante connesso all'attuale formulazione della "clausola di non adesione" è inoltre **l'assenza di una data di riferimento entro la quale la sopra citata opzione possa essere esercitata.** Ciò:

- genera indeterminatezza del numero dei soggetti che possono adire all'opzione di *non adesione* vanificando lo scopo della riforma. Infatti si potrebbe formare un certo numero di banche *stand alone* non appartenenti ad alcun network, incoraggiando quella frammentazione che con l'integrazione delle BCC in un Gruppo Bancario Cooperativo si intendeva ridurre o evitare;

- rende impossibile ad una candidata Capogruppo predisporre in tempo utile un solido piano industriale, indispensabile per essere autorizzati da parte di Banca d'Italia alla costituzione del Gruppo Bancario Cooperativo, non conoscendo numero definitivo e relative dimensioni dei candidati (le BCC potrebbero fondersi e trasformarsi sino all'ultimo istante) per tutto il tempo previsto dal decreto legge come utile per esercitare l'opzione.

Federcasse chiede:

a) che venga **salvaguardato il principio di indivisibilità delle riserve (costituenti un patrimonio intergenerazionale, non appannaggio dell'attuale generazioni di soci) nell'ambito dell'*unicum* rappresentato da una cooperativa a mutualità prevalente che esercita l'attività bancaria;**

b) che vengano **apportate le opportune modifiche in modo tale da garantire la coerenza delle "clausole di non adesione" che verranno previste nel provvedimento definitivo con quanto disposto dall'articolo 17 della legge 388/2000**[2] che reca una norma di interpretazione autentica sull'inderogabilità delle clausole mutualistiche da parte delle società cooperative e loro consorzi;

c) che comunque, **nel denegato caso non si volesse rinunciare a soluzioni derogatorie** a quanto sopra, **queste ultime dovrebbero essere eccezionali, confermare l'indivisibilità delle riserve e fare riferimento ad una data precisamente individuata e legata al momento di definitiva conversione in legge del presente Decreto** (in modo particolare se la deroga venisse condizionata all'esistenza di un dato quantitativo dimensionale).

Pare inoltre **necessario che l'eventuale intervento correttivo venga operato nelle "disposizioni attuative" dell'articolo 2 del Decreto per ribadire la straordinarietà di "contesto" della "clausola di non**

[2] L'art. 17, Legge 388/2000 recita come segue: *"1. Le disposizioni di cui all'articolo 26 del decreto legislativo del Capo provvisorio dello Stato 14 dicembre 1947, n. 1577, ratificato, con modificazioni dalla legge 2 aprile 1951, n. 302, all'articolo 14 del decreto del Presidente della Repubblica 29 settembre 1973, n. 601, e all'articolo 11, comma 5, della legge 31 gennaio 1992, n. 59, si interpretano nel senso che la soppressione da parte di società cooperative o loro consorzi delle clausole di cui al predetto articolo 26 comporta comunque per le stesse l'obbligo di devolvere il patrimonio effettivo in essere alla data della soppressione, dedotti il capitale versato e rivalutato ed i dividendi eventualmente maturati, ai fondi mutualistici di cui al citato articolo 11, comma 5. Allo stesso obbligo si intendono soggette le stesse società cooperative e loro consorzi nei casi di fusione e di trasformazione, ove non vietati dalla normativa vigente, in enti diversi dalle cooperative per le quali vigono le clausole di cui al citato articolo 26, nonché in caso di decadenza dai benefici fiscali".*

adesione", lasciando inalterato il regime ordinario (devoluzione ai fondi mutualistici) definito nell'art. 150-bis.

2.3. Requisito di solidità della Capogruppo

All'art. 37-bis, comma 1, lettera a) relativo **alla Capogruppo** è stato previsto che essa abbia un requisito minimo di **"patrimonio netto"** di **un miliardo di euro.** Nella proposta di *Auto*riforma si suggeriva di prendere **come parametro il "capitale".** Tale voce è ritenuta **più idonea a rappresentare la qualità di capitale primario di cui la Capogruppo deve disporre** anche a beneficio della credibilità sui mercati internazionali di approvvigionamento dei capitali nonché funzionale allo sviluppo delle BCC.

Inoltre, la voce "capitale" è propedeutica e funzionale al raggiungimento della maggioranza (in modo frazionato e partecipativo) da parte delle BCC; assicura una maggiore stabilità e tenuta prudenziale del requisito patrimoniale su base consolidata del Gruppo Bancario Cooperativo (maggiore capacità di assorbimento delle dinamiche patrimoniali di un Gruppo Bancario dai tratti particolari controllato da un numero significativo di BCC che mantengono requisiti di autonomia giuridica, patrimoniale e gestionale).

Federcasse chiede di confermare la soglia minima di un miliardo di euro e di reinserire la nozione di "capitale" per le ragioni sopra enunciate.

Federcasse chiede inoltre di correggere un refuso presente nel testo del Decreto con riferimento alla possibilità di sottoscrivere – ai sensi dell'art. 150-ter del TUB – azioni di finanziamento da parte della Capogruppo del Gruppo Bancario Cooperativo anche fuori dai limiti di territorialità e di importo che – per le BCC e i loro soci – sono stabiliti dall'articolo 34, commi 2 e 4 del TUB.

2.4. Strumento di accompagnamento per il periodo transitorio

Coerentemente con gli obiettivi della riforma, nella proposta di Autoriforma era stato previsto di inserire nelle norme transitorie e finali l'**istituzione di uno strumento temporaneo tra le BCC**, da attivarsi nel periodo che intercorre tra l'emanazione del Decreto e l'avvio dell'operatività del Gruppo Bancario Cooperativo, finalizzato al conseguimento di obiettivi di efficientamento e competitività anche attraverso il sostegno di processi di consolidamento e

concentrazione delle banche aderenti nonché, in generale, dell'assetto industriale del Credito Cooperativo. Tale strumento, nel Decreto 18/2016 risulta espunto.

Il meccanismo solidaristico ipotizzato – che prende spunto e consolida altri meccanismi analoghi di cui il sistema del Credito Cooperativo si è già autonomamente dotato per la finalità di tutela anche della fiducia nei confronti delle BCC e della protezione di soci e clienti - **anticipa gli effetti dell'adesione al Gruppo Bancario Cooperativo** attivandone, da subito, alcune importanti funzioni idonee a superare i più volte richiamati limiti di utilizzo efficiente delle risorse disponibili in un contesto nel quale non è ancora operativa la Capogruppo che potrebbe anche, a tali fini, aprirsi al mercato.

Si tratterebbe di uno strumento **temporaneo, totalmente autofinanziato dalle BCC, che cesserebbe la propria operatività con l'avvio di quella del Gruppo Bancario Cooperativo**. Ovviamente, a seguito della modifica dell'Art.150-*ter*, anche tale Fondo sarebbe fra quelli autorizzati a sottoscrivere le azioni di finanziamento ivi disciplinate.

Federcasse propone pertanto di reintrodurre la previsione relativa a tale strumento, ritenuto essenziale nella fase di accompagnamento di costruzione del Gruppo Bancario Cooperativo.

2.5. Poteri della Capogruppo

L'attuale formulazione dell'art. 37-bis, capoverso 3, lettera b) punto 2 prevede che i poteri della Capogruppo includano *"i casi, **comunque motivati ed eccezionali**, in cui la capogruppo può, rispettivamente, nominare, opporsi alla nomina o revocare uno o più componenti, fino a concorrenza della maggioranza, degli organi di amministrazione e controllo delle società aderenti al gruppo e le modalità di esercizio di tali poteri"*.

Tale previsione **contrasta almeno in parte con il dettato dell'IFRS 10** che disciplina il consolidamento contabile del Gruppo Bancario Cooperativo, **consolidamento necessario ai fini civilistici e prudenziali anche per poter usufruire dei vantaggi regolamentari appositamente previsti per i Gruppi bancari (quali, ad esempio, la ponderazione zero delle esposizioni infragruppo, il non assoggettamento alla deduzione delle partecipazioni reciproche, l'ottimizzazione della gestione della liquidità, ecc.).** Il principio contabile IFRS 10 stabilisce che alla Capogruppo siano riconosciuti, in materia,

poteri non aprioristicamente condizionati a prescindere dal loro effettivo esercizio. Nel testo, invece, si prevedono casi *"comunque motivati ed eccezionali"*. **Tale contrasto potrebbe produrre l'impossibilità di conseguire il consolidamento contabile da cui discende la possibilità di vedere riconosciuto lo "status" di Gruppo e di fruire dei benefici prudenziali e civilistici connessi.**

Federcasse chiede di rispristinare la formulazione concordata con le Autorità nel Progetto di *Auto*riforma che prevedeva **che i casi** nei quali la Capogruppo potesse nominare, opporsi alla nomina o revocare uno o più componenti **fossero comunque stabiliti nel contratto di coesione.** Andrebbero dunque eliminate la necessità di **"motivazione"** (proprio perché la casistica sarà definita nel contratto di coesione) e il carattere di **"eccezionalità"** (implicito nel principio generale previsto dall'art. 33 comma 3 che riserva agli organi sociali, in via ordinaria, detto potere di nomina degli esponenti).

3. APPENDICE

Breve profilo del sistema del Credito Cooperativo Italiano (dati al 31 dicembre 2015).

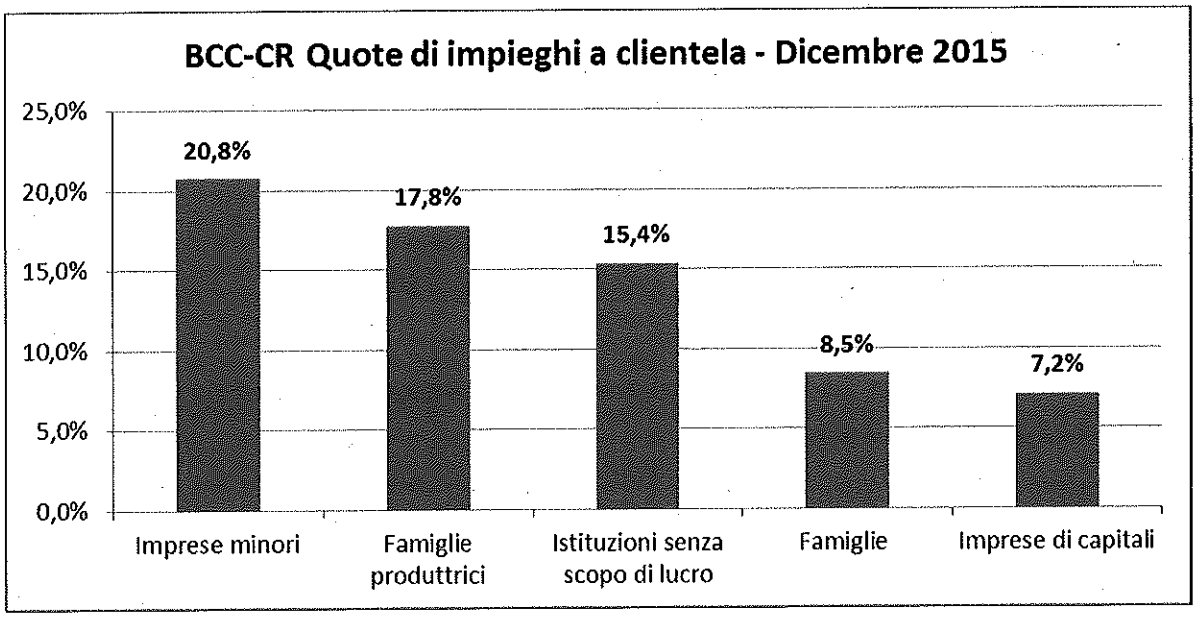
A dicembre 2015 si registrano **364 BCC-CR** (pari al 55,9 per cento del totale delle banche operanti in Italia), con **4.414 sportelli** (pari al 14,8 per cento). Il numero dei **soci**, alla stessa data, era pari **1.248.724** unità.

Le BCC-CR sono presenti in **101 province** e in **2.693 comuni**; in **549** di essi costituiscono **l'unica presenza bancaria**. Si tratta soprattutto di centri di media-piccola dimensione (oltre l'80 per cento degli sportelli delle BCC-CR è insediato in piazze fino a 50 mila abitanti).

I dipendenti sono pari a circa 31.300 unità a cui vanno aggiunti i quasi 5.000 dipendenti di Federazioni Locali, Banche di secondo livello e organismi consortili. Le dinamiche occupazionali proprie del Credito Cooperativo dimostrano, in controtendenza rispetto al resto del sistema, una tenuta occupazionale anche durante la crisi.

Dal punto di vista operativo le BCC-CR si caratterizzano per una forte specializzazione nell'attività di intermediazione tradizionale.

A dicembre 2015, su **130 miliardi di finanziamenti a clientela, ben 85,3 miliardi erano erogati a imprese**. In particolare, le BCC-CR sono divenute un partner rilevante delle piccole imprese oltre che delle famiglie, come dimostrano le quote di mercato raggiunte nel 2015



Questa presenza è il risultato di un continuo ruolo di sostegno alle piccole imprese e alle famiglie, volto a mitigare l'impatto della recessione e a sostenere l'attività economica reale.

Ciò appare ancora più evidente analizzando i flussi netti di finanziamenti oltre il breve termine erogati dalle BCC-CR all'economia: **tra il settembre 2010 e il settembre 2015** le BCC-CR hanno immesso **finanziamenti netti** (erogazioni al netto di rimborsi ed estinzioni) **per oltre 10 miliardi a fronte di una riduzione di circa 56 miliardi del resto dell'industria bancaria**.

Il sostegno al settore produttivo si evidenzia anche attraverso le quote di mercato raggiunte dalle BCC-CR in comparti di grande rilevanza per l'economia italiana come l'agricoltura, il commercio, le costruzioni, il turismo e la ristorazione.

BCC-CR Quote di mercato degli impieghi **Dicembre 2015**	
TOTALE SETTORE PRODUTTIVO	**9,6%**
ARTIGIANATO	22,4%
AGRICOLTURA	18,6%
ALLOGGIO E RISTORAZIONE	18,1%
COSTRUZIONI	10,9%
COMMERCIO	10,0%
MANIFATTURA	7,5%
SERVIZI SUPPORTO ALLE IMPRESE	6,1%
ATTIVITÀ PROFESSIONALI	6,0%
TRASPORTO E MAGAZZINAGGIO	5,3%
INFORMAZIONE E COMUNICAZIONE	4,3%
ALTRI FINANZIAMENTI	6,3%

La lunga recessione che ha colpito il sistema produttivo del paese ha provocato un peggioramento della qualità del credito che rimane comunque migliore della media dell'industria bancaria nei principali settori di attività economica

Rapporto sofferenze su impieghi (valori lordi) – Dicembre 2015		
Settori di attività economica	**BCC**	**Industria bancaria**
Famiglie consumatrici	5,9%	7,2%
Famiglie produttrici (microimprese)	10,7%	17,4%
Istituzioni senza scopo di lucro	1,9%	6,7%
Imprese minori	12,5%	20,2%
Imprese di capitali	17,3%	17,9%

Parallelamente è cresciuta in maniera costante **la raccolta da clientela** che **ha superato i 161 miliardi di euro**.

Il **patrimonio** delle banche della Categoria costituisce ancora un solido pilastro sul quale i loro soci e clienti possono contare: il patrimonio di sistema si attesta, a dicembre 2015, ad oltre **20 miliardi di euro**. Il **CET 1 ratio medio è del 16,6 per cento**.

Per quanto concerne la redditività, le BCC proprio per la tipologia di clientela servita, hanno risentito della prolungata fase di crisi dell'economia reale. I bassi tassi di interesse, la domanda stagnante e la crescita delle partite deteriorate hanno compresso il margine di intermediazione mentre la politica di difesa dell'occupazione ha reso rigidi i costi. A giugno 2015 **l'utile d'esercizio aggregato** delle BCC-CR è stato di **162,4 milioni**.

allegato n. 1

BANKING AND FINANCE

Call for evidence: EU regulatory framework for financial services

Fields marked with * are mandatory.

Introduction

The Commission is looking for empirical evidence and concrete feedback on:

- A. Rules affecting the ability of the economy to finance itself and growth;
- B. Unnecessary regulatory burdens;
- C. Interactions, inconsistencies and gaps;
- D. Rules giving rise to unintended consequences.

It is expected that the outcome of this consultation will provide a clearer understanding of the interaction of the individual rules and cumulative impact of the legislation as a whole including potential overlaps, inconsistencies and gaps. It will also help inform the individual reviews and provide a basis for concrete and coherent action where required.

Evidence is sought on the impacts of the EU financial legislation but also on the impacts of national implementation (e.g. gold-plating) and enforcement.

Feedback provided should be supported by relevant and verifiable empirical evidence and concrete examples. Any underlying assumptions should be clearly set out.

Feedback should be provided only on rules adopted by co-legislators to date.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report

summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-regulatory-framework-review@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

* Are you replying as:
  - ○ a private individual
  - ◉ an organisation or a company
  - ○ a public authority or an international organisation

* Name of your organisation:

FEDERCASSE - Italian Federation of Co-operative Credit Banks

Contact email address:

The information you provide here is for administrative purposes only and will not be published

espina@federcasse.bcc.it

* Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)
  - ◉ Yes
  - ○ No

* If so, please indicate your Register ID number:

051585416549-65

* Type of organisation:
  - ○ Academic institution
  - ○ Consultancy, law firm
  - ◉ Industry association
  - ○ Non-governmental organisation
  - ○ Trade union
  - ○ Company, SME, micro-enterprise, sole trader
  - ○ Consumer organisation
  - ○ Media
  - ○ Think tank
  - ○ Other

* Where are you based and/or where do you carry out your activity?

Italy

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☑ Banking
- ☐ Consumer protection
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☐ Other
- ☐ Not applicable

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- ○ Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ◉ No, I do not want my response to be published

2. Your feedback

In this section you will have the opportunity to provide evidence on the 15 issues set out in the consultation paper. You can provide up to 5 examples for each issue.

If you would like to submit a cover letter or executive summary of the main points you will provide below, please upload it here:

- **1f638cfc-f496-4c26-800c-1d9e09eaed21/2016.01.31 Call for evidence_def_h.19,00.docx**

Please choose at least one issue from at least one of the following four thematic areas on which you would like to provide evidence:

A. Rules affecting the ability of the economy to finance itself and grow

You can select one or more issues, or leave all issues unselected

- ☐ Issue 1 - Unnecessary regulatory constraints on financing
- ☐ Issue 2 - Market liquidity
- ☐ Issue 3 - Investor and consumer protection
- ☑ Issue 4 - Proportionality / preserving diversity in the EU financial sector

Issue 4 – Proportionality / preserving diversity in the EU financial sector

Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

How many examples do you want to provide for this issue?

○ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ◉ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
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- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)

- ☐ EuVECA (European venture capital funds Regulation)
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- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
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- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
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- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

There is a broad agreement among academics and practitioners that diversity in the financial sector is beneficial for competition, stability and economic growth (especially for the industrial structure of Europe in which SMEs are the fundamental backbone). Indeed, the European banking industry is composed of institutions that pursue different objectives (for example, shareholder value and stakeholder value oriented banks), with different business models (retail, investment, services), governance (co-operative, joint-stock) and organization (formal/informal network, standalone banks, banking groups). This diversity is the outcome of the historical interaction between the financial sector and the real economy. Regulation is a fundamental parameter of the economic environment and the change of this parameter can influence the structure of the organizations in the market. We believe that "one size fits

all" rules (crafted following the BCBS principles that target principally large systemic banks), applied to institution with different governance and organizational structures can hamper competition, reduce stability in the long term, introduce an uneven playing field. Hereafter we would like to highlight some critical issues for the Italian Credit Cooperative network.

Crisis management and resolution procedures: regulation - driven uncertainty
In the past, DGSs with extended mandate, especially when these DGSs are sectorial in the scope (like the Deposit Guarantee Fund for Italian Credit Co-operative Banks - FGD) have played a very relevant role. They have achieved a consistent balance between competition and stability for local and small-sized banks. While undertaking resolution actions for this category of banks, they were able to avoid depositors' reimbursement and disruption in credit relations while minimizing the total costs of resolutions. In Italy for example, FGD has always acted on the basis of the minimum costs between depositors' reimbursement and other resolution actions (As recognized by the IMF: "The resolution framework and toolkit have been used to resolve successfully small banks" pg.22 - IMF Country Report n.13/350; Technical note on safety nets - December 2013 - pg.22). This "safety net" is a necessary requisite for a network of small banks that share the same brand and a large amount of investments in common services (as back office activities). The DGS Directive (2014/49/UE) maintained the possibility for DGSs to finance alternative measures (art. 11) under certain conditions. Also BRRD recalls, under art. 32, alternative measures that can be explored before resolution is applied. In spite of these clear legislative references, crisis management inside the BCC network have become much more difficult due to the restrictive interpretation of the Communication from the Commission on the application of State aid rules to support measures in favor of banks in the context of the financial crisis (2013/C 216/01). According to these new criteria, even if the DGS, while intervening in restructuring or other form of interventions that is not depositors' reimbursement, ensures the respect of the principle of the lower costs (using only private resources and with procedures that do not involve any public institution), is challengeable for having breached the State aid ban. Therefore, on one side the legislation gives room to the best practices used in the past; on the other side, these practices are blocked for competition concerns that are declared in principle but not detailed in any further documentation. This has created a regulation-driven uncertainty that makes much longer and expensive to cope with bank crisis situation inside the network. Moreover the disruption of a central feature of the BCC network (its specific "safety net") may create an uneven playing field and penalize banks that have always managed to solve crisis situation inside the network with private resources.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

We believe that the Commission should update the 2013 communication ("Banking Communication") in light of the fact that the regulatory landscape related to crisis management has changed considerably with the introduction of BRR and the DGS directive and the forthcoming EDIS regulation.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Moreover, greater acknowledgement should be given to the specific situation of small banks, especially if members of a network that share the same brand and large common investments. In the 2013 Communication some leeway was introduced for small banks (art. 54) but the limitation to "bank with a balance-sheet total of not more than EUR 100 million" circumscribes the application only to an irrelevant number of institutions. Threshold waiver should significantly be raised taking into account the negligible impact of financial support to a small bank on competition at the Banking Union level; moreover, waiver should also meet the same criteria which are adopted for the public interest test under the BRRD regime. Finally, administrative burden for state aid evaluation should also be taken into consideration with respect to both the size of the bank and amount of aid.

Example 2 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

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- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ EuVECA (European venture capital funds
- ☐

Regulation)

- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
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- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

SRF fees - lack of proportionality

According to the Basel Committee on Banking Supervision, supervisory and resolution practices should be commensurate with the risk profile and systemic importance of the banks being supervised, thereby accommodating smaller, less complex deposit taking institutions. This understanding of the principle of proportionality in the context of resolution and contributions to be paid to the resolution fund entails two aspects: (i) a fairness issue (to which extent can small credit institutions pose a systemic threat to the financial stability and for this reason, contribute to the resolution fund) and, (ii) an effectiveness issue related to the contribution mechanism as a tool designed to align somehow, supervision and resolution objectives, on one side, and incentives to banks' behavior on the other.

The approach, chosen by the Commission, by which small credit institutions contribute to the SRF by a small lump-sum seems consistent with this vision, would simplify the calculation of fees (on the side of the authority) and would yield a more consistent picture.
Unfortunately, the first round of SRF fee collection shows that the criterion proposed to define small banks (under 1 billion of total assets and 300 millions of contribution base) in the SRM regulation seems unreasonably too restrictive.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

In the first year of contribution in Italy, the 374 BCCs represented the 6 per cent of the banking industry contribution base and paid 6 per cent of the total contribution. Therefore, even though very small BCCs paid a small amount, the overall contribution of the sector did not experience any significant "proportionality" even though they are small, non-systemic institutions.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

A higher threshold (closer to the one chosen within the SSM) should be set in order to discriminate between significant and least significant institutions. A further analysis of the "risk profile indicators" should also be carried out.

Example 3 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

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- [x] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

SRF fees - Double accounting
The calculation method for contributions to the SRF, as proposed by the Commission, has a detrimental effect on the Italia Credito Cooperativo resulting in a double accounting on the Banche di Credito Cooperativo (the local cooperative banks, BCCs) and on their Central Institutions (or Second Level Banks, B2L).

BCCs operate within a network where B2Ls provide a wide range of services for the former. In particular, since BCCs, in most cases, do not have direct access to ECB and other market players, B2Ls fulfill certain obligations (e.g. ROB, operational accounts for payment systems management, etc.) and carry out certain activities on behalf of the BCCs. A typical example is represented by refinancing operations with the ECB (or with other market players).
In nutshell, a BCC gives to the B2L (Iccrea Banca, Cassa Centrale Banca, Cassa Centrale Raiffeisen) a number of securities (typically, sovereigns) through a financial guarantee agreement (pursuant to D.Lgs.170/2004). The B2L uses the securities in order to take part in the refinancing operation with the ECB (or with other market players) and, with the moneys gained, it finances the BCCs under modalities and conditions correlated to those offered by the ECB (or by other market players).

In practice, the refinancing operation of a BCC with the ECB (or with other market operators), if performed directly would trigger an increase in the liabilities of the sole BCC. In such case the contribution base of the SRF (total liabilities less covered deposits less own funds) would rise for the sole BCC (e.g. 100 Mio).
Differently, due to the peculiar role of technical support played by the B2L in order to reduce the administrative burden for the BCCs, the B2L registers liabilities for 100 Mio with the ECB (or other market player) and the BCC also increases its liability towards the B2L by 100 Mio.
As a consequence, the support activity provided by the B2L in favour of the BCC results in an increased contribution base for BCC-B2L, from 100 to 200 Mio.
This is even more of a paradox, considering that the liabilities are fully collateralized (that is, over-collateralized, due to the applied haircut) with a daily margin on the mark to market value of the security as collateral.
A mechanism producing a similar effect of balance sheet inflation for the B2Ls is that related to the management of the ROB of BCCs with the ECB, as well as the operational deposits which BCCs must hold with the B2L in order to access payment systems.
Another aspect which is worth dealing with is the potential further detrimental effect for B2Ls of the Italian Credito Cooperativo also in the calculation of the quota referred to risk adjustment. In fact the formula envisages an increase for banks in relation to the exposure on the interbank market.
It is self-evident that, due to the activity performed by B2L, their interbank exposure is higher than the average of other banks, but it is not a function of a volatile funding (on the contrary, deposits of BCCs with B2L are very stable and, during the crisis where interbank market froze, they increased.
Furthermore, it must be recalled that the shareholders of B2L are the BCCs: a significant reduction of B2Ls' profit, caused by a disproportionate contribution to the SRF, results in a decrease of profit to be distributed to BCCs and adds to the costs borne to contribute to the SRF.
Finally, we must touch upon the effect of regulation upon the organizational strategy of the banks. Cooperative banks within the EU have set up different organizational structures according to the economic, social and institutional features of the Member States where they operate. In Italy, the network

structure, with B2Ls at the heart of network, allowed BCCs to obtain economies of scale and diversification, although keeping their roots in their territory. Moreover, when the crisis hit and interbank market dried up, the network has proven effective by keeping high levels of liquidity (and of confidence) within the category.
The application of a regulatory framework which does not recognize specific organizational structures activated as a response to the market, risks penalizing the efficiency of a relevant banking market player. Paradoxically, a structure which has proven efficient and competitive might need be changed not in response to market or customer needs, but only because different from other structures (main stream banking groups) and not recognized by regulation.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

The described activity, for the Italian Credito Cooperativo, is quite significant. For instance, for Iccrea Banca (the biggest out of the above mentioned three B2L of the Credito Cooperativo network), it weighs for almost half of total liabilities, which is equal to 42 Bln.
Had the described activity of B2Ls been computed correctly, the contribution base for Iccrea Banca, for instance, would result as halved.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Provide, as allowed for the intragroup liabilities for banking groups, the possibility to exclude the liabilities stemming from the described activity carried out by the Central institutions of Credito Cooperativo on behalf of local banks, from the contribution base.
Reassess the weight of the interbank exposure in the risk profile in case of specific institutional activity on behalf of a network of local banks

Example 4 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

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- [x] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Excessive resource commitment

BCC are small banks that contribute to the DGS fund and SRF with the same rules applied to large and systemic banks. The annual cost, borne by the BCCs network, of the regular contribution to both fund is estimated in around 100 million per year. This is a very large amount compared to the likelihood of causing of a liability for one or both fund. Indeed, being small banks, BCCs may not pass the test of "public interest". Moreover, in case of regular liquidation the depositor preference would minimize the possible losses of the DGS fund. More important, BCCs have internal solidarity mechanisms that would intervene in case of crisis (as already done many times in the past) reducing almost to zero the probability of using the SRF and the DGS fund.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

In the 1997-2013 period the BCCs network (coordinated by its sectorial DGS) carried out 26 resolution-like interventions with an overall cost of 159,9 million euros. This demonstrates that: a) the BCCS network is able to efficiently manage crises that may affect its members; b) in terms of costs, this is a much smaller amount compared to the contribution that will be paid by the BCCs network.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We firmly believe that, in the calculation of contributions to the SRF and to the DGS fund, due consideration to the bank participation to a cooperative solidarity mechanism in its function of risk minimizer should be provided. In particular, the delegated act to be issued in accordance with Article 93 of the forthcoming EDIS regulation, specifying the method for the calculation of contributions payable to participating DGSs, should consider among the risk criteria the participation of the institution to cooperative solidarity schemes.

Example 5 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation

- [x] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] ELTIF (Long-term Investment Fund Regulation)
- [ ] E-Money Directive
- [ ] ESRB (European Systemic Risk Board Regulation)
- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
- [ ] MCD (Mortgage Credit Directive)
- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] Directive on non-financial reporting
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PD (Prospectus Directive)
- [ ] PSD (Payment Services Directive)
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Remuneration policies represent a practical example of an issue where the concrete application of the principle of proportionality is central,

especially if we consider that such provisions arise from the need to provide large-sized institutions with adequate remuneration policies, the lack of which has, indeed, contributed to the financial crisis started in 2007.
More specifically, recital 66 and art. 92 of the CRD IV envisage that the provisions on remuneration should "reflect differences between different types of institutions in a proportionate manner, taking into account their size, their internal organization and nature, scope and complexity of their activities".
Considering the abovementioned arguments, there should be a room for a possible exemption (neutralization) of the application of rules on variable payments to:

- smaller institutions
- low amounts of variable remuneration
- non-financial institutions

Moreover, eliminating possibilities of neutralization does not make any reference to collective labour agreements. In fact, in some jurisdictions variable elements are part of such agreements and are paid either to all employees, or to certain categories of employees. Particularly in smaller regional institutions, which identify a high percentage of staff members as material risk takers, the rules on variable remuneration would have to be applied to a relevant number of staff members falling under collective agreements.
Furthermore, recital 69 of the CRDIV specifically envisages that the "provisions on remuneration should be without prejudice to the full exercise of fundamental rights under article 153 (5) …and the rights of social partners to conclude and enforce collective agreements, in accordance with national law and customs."
However, the proposed application of the rules on variable remuneration to all banks and to any material risk-taker implies many criticalities arising with reference to (i) the specific legal model, (ii) the business model and (iii) the collective bargaining of BCCs.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

PLEASE SEE PAGES 9, 10, 11 of the uploaded document to see graphs containing empirical evidence/DATA

(i) BCCs legal model
BCCs issue one type of shares. Admittance to BCCs' membership implies (i.e. admittance to become shareholder) an application process regulated by law and statutes. In order to become a member of a BCC, the applicant must be resident or continuously operate in the local area of competence of the bank. At the least 50% of loans must be towards members. Furthermore, each member can own

only up to a total amount of 50.000 euros worth of shares. As a consequence, Art. 94 (1) (l) of the CRD IV – stating that at least 50% of any variable remuneration shall consist of a balance of shares and other instruments which can be fully converted to Common equity tier 1 instruments – is inadequate to BCCs, due to legal and governance reasons.

(ii) BCC business model
BCCs, due to their co-operative and mutualistic nature, do not carry out speculative activities (also due to specific binding legislation preventing them to do so) and adopt the business model of a traditional bank: BCCs are deeply rooted in the local economies in which they operate with a system covering the whole of Italy. In particular, small business sector and households are the customer segments BCCs are focused on. The adoption of this business model, compared to the other financial institutions, restricts significantly the assumption of risk. For these reasons, ex-post risk adjustments – such as deferred remuneration – would imply excessive costs with respect to the relative benefits.
In the light of the above observations, Art. 94 (1) (m) of the CRD IV – stating that at least 40% of the variable remuneration component is deferred over a period which is not less than 3 years – would be disproportionate and too burdensome for BCCs with respect to their business model.
In this context, it would be more proportionate to introduce a threshold – in absolute or relative terms (in the latter case with reference to the gross yearly income) – below which deferring period and other ex post risk adjustments (malus and claw back) are discretionary.

(iii) BCCs collective bargaining
BCCs remuneration policies are basically linked to collective bargaining and, therefore, the incentives' weight on the overall remuneration is really marginal. Indeed, fixed remuneration components mainly refer to the collective bargaining (e.g. salary, potential indemnities and/disbursements linked to the length of service and/or depends on fulfilling a certain role or having a certain organizational responsibility). Actually, also variable remuneration components – which are connected to business or individuals' performance – mainly refer to collective bargaining (e.g. the annual bonus for the managers and the productivity bonus for the senior management and the workers of the professional areas). The only variable remuneration components which are independent from collective bargaining are individual bonuses and incentives; although, referring to incentives, the national collective agreement provide that banks cannot pay them out in specific circumstances (e.g. failure of the banks) and that they have to be compliant with remuneration policy of the bank.

PLEASE SEE PAGES 9, 10, 11 of the uploaded document to see graphs containing empirical evidence/DATA

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Incentives and bonuses represent a minimal part of total remuneration (on average less than 6 per cent). Consequently, the application of minimum requirements as set out in the CRD IV for variable remuneration sounds disproportionate and burdensome also considering the weight of variable remuneration on total remuneration.
Furthermore, the national collective labor agreement of BCCs establish a contractual obligation to pay out every year a productivity bonus linked to the performance of the bank in the preceding year. The amount of the productivity bonus is variable, is usually lower than one monthly salary and, under some circumstances, it may not be awarded at all. Indeed, the amount of the bonus productivity is linked to indicators – set out by the collective agreement – that take into account profitability, risks, productivity and efficiency in order to measure the economic performance of the bank, and it is allocated to the staff on the basis of their placement.
In the light of the above observations, the allocation of the productivity bonus as variable remuneration could imply a breach of the collective agreements, considering that it should be paid in full in a specific time determined by collective agreements.
For these reasons, payments made mandatory under national collective agreements should be considered as fixed remuneration.

Summing up, the proposed application of the remuneration policies would results in regulation which:

- imposes the highest administrative burden on the smallest institutions, since they have, proportionally, the highest amount of material risk takers. Especially in the smallest institutions, which cannot hire additional staff, the workload for directors will be increased significantly, while relevant expenses for consultations, IT, etc. will be required;
- produces disproportionate results, since it will affect a mass of low to medium earners, which were certainly not in the focus of the regulator;
- results in the deferral, retention and pay-out in instruments of a high number of low amounts, which produce high cost, while not being understood by banks and their staff and considered as "bureaucratic";
- ignores that in the case of deferral, retention and pay-out in instruments of low amounts the intended effects, i.e. to increase sensitivity of staff for the risks incurred, will not be perceived anymore.
- makes variable payment costly and unattractive and, among other consequences, may lead to a less risk-based remuneration policy.

Finally we would like to highlight the recent EBA opinion on the application of the principle of proportionality to the remuneration provisions in Directive 2013/36/EU. EBA is of the view that:

- it should be possible in particular for small and non-complex institutions to achieve the result prescribed by Directive 2013/36/EU without the application of deferral and payout in instruments for variable remuneration; the same holds true when those principles would not apply to staff who receive non-material amounts of variable remuneration(pg.7)
- In order to achieve an appropriate level of harmonisation, the EBA proposes that the overall scope of the exemptions to the remuneration principles should be set via the ordinary legislative procedure (pg.8)

We agree with the recent EBA opinion on the application of the principle of

proportionality to the remuneration.

Fit and proper requirements

A related topic that carries similar criticalities concern the Fit and Proper requirements for Board members and Directors.
The application of rules should be compatible with the core principles of the cooperatives, particularly the democratic principle of election by members and the principle under which directors are members.
Also the requirements, that will be more precisely specified in the forthcoming guidelines by EBA, should not undermine the specific cooperative governance model. For example the expertise and experience requirement should take into consideration the size, the scope and the complexity of the institution. The diversity criteria should be applied to local banks with the necessary flexibility to avoid requirements of geographical diversity or international expertise that would conflict with the local nature of the bank.

If you have further quantitative or qualitative evidence related to issue 4 that you would like to submit, please upload it here:

- **e062e19b-ab6f-409f-bba1-1ff6d3eff017/2016.01.31 Call for evidence_def_h.19,00.docx**

B. Unnecessary regulatory burdens

You can select one or more issues, or leave all issues unselected

- [x] Issue 5 - Excessive compliance costs and complexity
- [x] Issue 6 - Reporting and disclosure obligations
- [ ] Issue 7 - Contractual documentation
- [ ] Issue 8 - Rules outdated due to technological change
- [ ] Issue 9 - Barriers to entry

Issue 5 – Excessive compliance costs and complexity

In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.

How many examples do you want to provide for this issue?

◉ 1 example ○ 2 examples ○ 3 examples ○ 4 examples ○ 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 5 (Excessive compliance costs and complexity)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)

- ☐ Reinsurance Directive
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFD (Settlement Finality Directive)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ Solvency II Directive
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ SSR (Short Selling Regulation)
- ☐ Statutory Audit - Directive and Regulation
- ☐ Transparency Directive
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☑ Other Directive(s) and/or Regulation(s)

* **Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Benchmark Regulation whose text is expected to be released in April/May 2016. http://data.consilium.europa.eu/doc/document/ST-14985-2015-INIT/en/pdf,

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

We refer to the obligation of the suitability assessment, that is likely to be linked with Consumer Credit Directive and to Mortgage Credit Directive and where it is intended to provide that the credit intermediary shall give the name of the benchmark and of its administrator and the potential implications on the consumer.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

It is important to highlight that, when a customer needs a banking product, its intention is only to sign a financial contract and to know the cost of credit; on that point, we think that the existent legislation (CCD and MCD) gives already the exhaustive information to sign a fair agreement. Adding a new set of information like "the potential implications of the benchmark" does not represent a useful evidence for consumers and represents only a way to increase costs and complexity for the banks. At the same time, it represents a risk of a certain increase in litigation between banks and clients.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We think that this burden is excessive and could increase complexity without a real positive effect for the consumers. For this reason we suggest to delete this provision

If you have further quantitative or qualitative evidence related to issue 5 that you would like to submit, please upload it here:

Issue 6 – Reporting and disclosure obligations

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.

Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals.

Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

How many examples do you want to provide for this issue?

○ **1** example ○ **2** examples ○ **3** examples ◉ **4** examples ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 6 (Reporting and disclosure obligations)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
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- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive

☐ UCITS (Undertakings for collective investment in transferable securities)

☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The EC proposal of review of the Prospectus Directive (2003/71/EC) moves from the consideration that it is necessary to simplify and reduce costs and administrative burdens that weigh on small issuers, decreasing their efficiency.
Typically, issuers bear costs and administrative burdens - not only in order to draw up the prospectus but also in monitoring the process - related to:
collection of the information,
elaborating financial information and other documents that support the public offer (e.g. notice to the public),
requesting the process of preliminary activities and approval by the competent authority, bearing the competent authorities' fees (a fixed fee and a variable fee that consists of a percentage of the value issued),
requesting a legal support (often external),
involving and training staff involved in this activity for several weeks/months,
updating data,
carrying out on going actions and controls to ensure compliance with the obligation.
These burdens are not proportionate to the current threshold of exemption (i.e. EUR 75,000,000 for "plain vanilla" banking bonds).
In general, it should be noted that disclosure on financial products and issuers are published under other directives/regulations and are available to the investors (e.g. PRIIPs, Market Abuse, financial statements).

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

not available

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

An increase of previously mentioned limits shall not mean a lack of protection for investors. For example banks are submitted to the action of several Supervisors (in Italy: Bank of Italy, Consob - Financial Service Authority,

etc.). In particular, it is worth pointing out that the facilitation means that the issuer (in an Italian framework) can publish a "simplified" prospectus, rather than an "ordinary" or base prospectus, without compromising the protection of investors. In general, in Italy, the issuer, even if exempted, typically provides a summary information (terms and conditions) to investors.
Therefore, the current threshold of exemption should be revisited (increased) in order to make it more consistent with the imposed burdens. This will not nullify the protection willing. In fact, for the BCCs the plain vanilla are almost all the issues made.
Only as an alternative, the issuer should draw up and publish a more proportionate disclosure as a summary document (e.g. KID), rather than an "ordinary" or base prospectus, that illustrate the key information regarding the issuer, in order to provide the features of financial products offered, the main risks and costs associated and other relevant and key information.
In both cases, this would facilitate the issues of SMEs and also of Cooperative Banks that have been supporting local economy granting loans to SMEs.
It is worth pointing out that a higher bond issuance, due to the proposal to increase the limits of exemption, could be useful to achieve another goal: the stability of the small banks financial system. In this way, a barrier to transform the short term funding (volatile) into medium and long term funding (stable), should be eliminated with the benefits of strengthening the financial system as a whole.

Example 2 for Issue 6 (Reporting and disclosure obligations)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

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- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)

- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ Life Insurance Directive
- ☑ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MCD (Mortgage Credit Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
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- ☐ Transparency Directive
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The new framework is contained in a Directive (MAD) and in regulation (MAR). In general, the new Directive increases the obligations required for intermediaries. With particular reference to BCCs it should be noted that the main concern pertains to the extension of the scope of market abuse also to instruments traded on MTFs. In connection with this extension, BCCs which trade their securities on Hi-MFT would find themselves subject to the same rules applicable to issuers of securities listed on regulated markets. In particular, it would apply the obligations of public disclosure of inside information ("disclosure price sensitive").
The additional costs arising from the disclosure requirements may discourage trading on Hi-MTF entailing in fact a reduction of the solutions used by the network to strengthen the liquidity of financial instruments.

In addition, it is emphasized that the discipline assumed that the execution of specific actions- considered improper and therefore punishable (such as the "market manipulation") - are likely to affect the price of the financial instruments protection. However the European legislator considered that all financial instruments traded on various Trading Venues (Regulated Market, MTF and new OTF) should be eligible for protection under the assumption mentioned above, without making any distinction between types of market and categories of financial instruments.
In this regard, with regard to the effectiveness of disclosure to clients, we believe that the approach adopted by the European Commission is very strict and that the provisions relate essentially and functionally to the stock market, particularly volatile, with prices of most financial instruments subject to the influence of corporate disclosure. Instead, with regard to the bond market it must be considered that the price of bonds, less prone to volatility, is a function of the financial variables inherent in the instrument itself, rather than to corporate information.
These new requirements vis a vis obvious additional costs for banks would not generate significant benefits and would deprive, in many cases, investors of the liquidity in the securities they hold.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

not available

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

While maintaining the application of the general rules on market abuse (i.e. insider trading and market manipulation) for instruments traded on MTFs (and OTFs), we advocate for an exemption from disclosure of inside information rules for issuers have issued bonds traded exclusively on a MTF or an OTF, regardless of their request of admission to trading of such bonds on these venues.

Example 3 for Issue 6 (Reporting and disclosure obligations)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other

adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ Directive on non-financial reporting
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ E-Money Directive
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ Life Insurance Directive
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MCD (Mortgage Credit Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus I (new EU supervisory framework)
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PAD (Payments Account Directive)
- ☐ PD (Prospectus Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☑ PSD (Payment Services Directive)
- ☐ Qualifying holdings Directive
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ Reinsurance Directive
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFD (Settlement Finality Directive)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ Solvency II Directive
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ SSR (Short Selling Regulation)
- ☐ Statutory Audit - Directive and Regulation
- ☐ Transparency Directive
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Article 96 - Incident reporting. PSD2 provides that in the case of an operational or security incident, payment service providers shall notify the competent authority in the home Member State of the payment service provider. It is also provided that where the incident may have an impact on the financial interests of its users, the PSP shall inform its users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

not available

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We believe that the burden of a notification so general will increase cost and complexity, also considering that banks are already obliged to draft a disaster recovery plan and, for that reason, the new burden of a notification for a "operational or security" incident seems useless; for the same reason the obligation to notify the incident to the customer could have the only effect of an increase in litigation and, consequently of costs.
We suggest to delete this provision or, otherwise, to reduce the burden with an internal report to be maintained at disposal of the authority, should that result necessary.

Example 4 for Issue 6 (Reporting and disclosure obligations)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative acts the example refers to.

☐ Accounting Directive

☐ AIFMD (Alternative Investment Funds Directive)

- [ ] BRRD (Bank recovery and resolution Directive)
- [x] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] ELTIF (Long-term Investment Fund Regulation)
- [ ] E-Money Directive
- [ ] ESRB (European Systemic Risk Board Regulation)
- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
- [ ] MCD (Mortgage Credit Directive)
- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] Directive on non-financial reporting
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PD (Prospectus Directive)
- [ ] PSD (Payment Services Directive)
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [x] Other Directive(s) and/or Regulation(s)

* **Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

implementing Regulation (UE) n. 680/2014 of the Commission (supervisory reporting).

★ **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

In particular, Regulation (UE) n. 680/2014 establishes homogeneous obligations for all subjects applying CRR in relation to supervisory reporting to competent authorities in specific precincts established under art. 1 of the cited Regulation (UE) n. 680/2014. The schemes and the information contents therein, having to account for all possible operational scenarios, are extremely articulated and complex. One of the informative areas pertains to the financial information on a consolidated basis (FINREP), in relation to which - with Regulation (UE) 2015/534 as of 17 March 2015 - the ECB has established the extension of the reporting obligation also to intermediaries on a stand-alone basis, defining differentiated schemes and contents in function of the size profile. We hereby point out, incidentally, that such latter Regulation, neither aiming at jeopardizing accounting principles applied by groups and supervised entities in their consolidated or annual accounts, nor at amending accounting principles applied for supervisory reporting, defines specific reporting models for groups and supervised entities which apply national accounting rules based on Directive 86/635/CEE. With reference to disclosure, Part Eight of CRR, with a view to favouring market discipline, sets rules for Third Pillar disclosure pertaining to, inter alia, regulatory capital composition and the modalities under which the bank calculates capital ratios, capital adequacy, exposure to various risks and the general features of the related risk management systems, transparency requirements over exposures to securitizations, profiles pertaining to governance and remuneration and incentive systems adopted. The above mentioned reporting obligations, again very complex, are disciplined univocally with reference to the generality of intermediaries falling within the scope of CRR. We hereby underline how, vis a vis a highly and unjustified costly production of data, the reporting under the Regulation seems completely unfit to cover the information expectations of the stakeholders of a local bank, even more so when the latter is a cooperative entity, and overwhelming vis a vis the reporting obligation as of balance sheet practice. Crystal-clear proof of that is the indifference and carelessness which follows the publication of the former on the website.
More generally, obligations on disclosure as well as on ITSs on supervisory reporting regarding statistics and periodical financial data seem particularly costly for smaller intermediaries which are featured, inter alia, by reduced organizational articulation.

★ **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

We hereby point out, for instance, as the extension of FINREP obligations determines for such intermediaries the need to set for a three-months deadline procedures and evaluation activities currently carried out (partially) on a six-months basis, partially only an annual basis, with inevitable repercussions on the size of the staff (estimated increases by 5%) and on administrative costs deriving from the reorganization of work and processes, of the externalised operational contents. Such heavier burden does not seem to be counterbalanced with the corresponding higher transparency and in the information support to the supervisory action.
Generally speaking, the mission of the supervisory action is projected by the legislator onto a 'scheme reflecting the strategic matrix of supervision, with a view to (i) reducing the probability of defaults and (ii) reduce the social costs of defaults. The deriving link between supervisory action and reporting obligations for banks is self-evident. The intensity of supervision action onto banks results in a primary focus on significant banks. Within such context lies the principle of proportionality - whose centrality within the revision of the regulatory EU framework I frequently stated by the Authorities.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Furthermore, the use for supervision of accounting data determined in application of extremely diversified rules and methods does not seem consistent with the reaching of reporting obligations. The absence of single accounting rules within the Banking Union still represents a significant obstacle for the adequate functioning of the SSM. We therefore strongly advocate for a single common language for accounting rules, to be found in IFRS, presently mandatory only for listed banks at consolidated level in Europe and, in Italy , binding for all sorts of intermediaries regardless of any different business model, legal form or size.

If you have further quantitative or qualitative evidence related to issue 6 that you would like to submit, please upload it here:

C. Interactions of individual rules, inconsistencies and gaps

You can select one or more issues, or leave all issues unselected

- [x] Issue 10 - Links between individual rules and overall cumulative impact
- [x] Issue 11 - Definitions
- [x] Issue 12 - Overlaps, duplications and inconsistencies
- [ ] Issue 13 - Gaps

Issue 10 – Links between individual rules and overall cumulative impact

Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

How many examples do you want to provide for this issue?

○ **1** example ◉ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 10 (Links between individual rules and overall cumulative impact)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☑ BRRD (Bank recovery and resolution Directive)
- ☑ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☑ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- MAD/R (Market Abuse Regulation & Criminal

- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ Sanctions Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☑ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

★ **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The three fundamental pillars of the Banking Union (SSM, BRRD/SRM, DGS soon turning into EDIS) and its prudential foundations (CRR/CRD IV) have been put into place efficiently, also in terms of time-efficiency of the adoption and implementation process. However, the combined and far reaching effects of such corpus of legislation should have been evaluated more accurately, because their enforcement takes place after 7 years of harsh recession, especially in certain Member States.
Generally speaking, a more phase-in introduction, with a transitional period for the application of certain rules, for example the bail-in, should have been provided in order no to spread panic effects on the markets, especially in member States where citizens have had for a long time a very low perception of risk, for example on retail bonds.

★ **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

As for the Italian case, the capital that citizens have invested in such instruments up to the end of 2015, is now subject to rules that came into

force after the contractual terms were agreed, with retroactive effect. The awareness that such capital, invested under different rules, could now be potentially lost, is causing breach of trust and confusion.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

In such view:
- the bail-in instrument could be revised and made applicable only to financial instruments with a clear contractual indication (also in line with a recent view expressed by the Governor of Bank of Italy, on January 30th 2016, Turin);
- a phase-in period could allow banks to issue new bonds clearly subject, from the start, to the conditions of BRRD.

Example 2 for Issue 10 (Links between individual rules and overall cumulative impact)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
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- ☐ Accounting Directive
- ☑ BRRD (Bank recovery and resolution Directive)
- ☑ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☑ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)

- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☑ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☑ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

It is widely recognized by an increasing number of scholars that Basel III package as received in the EU framework applies in its entirety to all credit institutions. Differently from the U.S, no meaningful distinction has been made between local banks, especially those of small size and big national/trans-national players. Straightforwardly, the CRR/CRD IV aims at reducing with the same intensity, the probability of banks failure, regardless of their size, scope of operations and business models.
At the same time the RRF applies to all credit institutions with the aim to reduce the costs of banks' failure. Although in "General provisions", Art. 4 of the BRRD requires Member States to ensure that competent and resolution authorities apply simplified obligation for certain institutions, the concrete implementation of this general provision is very ineffective. First of all, implementing criteria have been delegated to the EBA. Secondly, EBA in turn has left the final words to national authorities. In such fashion, the application of the proportionality principle is "watered down" along the regulatory chain and finds different treatments according to different national rules.

*

Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

The EBA/GL/2015/16 on this issue deserves a brief comment.
In order to achieve the convergence of reporting practices by authorities as regards their approach to the implementation of Art. 4, the EBA/GL/2015/16 and the EBA/ITS/2015/ try to strike a balance between an institution-specific-based approach and a category-based approach.
Emphasis is put on a "case-by-case", institution-specific-based approach rather than on a category-based approach. The rationale of EBA/GL/2015/16 is that even institutions with no systemic relevance should be assessed because those institutions, although systemically irrelevant, may trigger systemic negative effects if wound up under normal insolvency proceedings. As a matter of fact, the RRF aims at lowering the costs of failure for all banks with the same intensity, without a meaningful differentiation based on the systemic relevance of banks.
Therefore, taken together, the CRR/CRD IV and the RRF fail to understand the trade-off and to position the whole regulation at a sustainable equilibrium.
As a consequence, the burden related to the recovery and resolution planning may not be meaningfully minimized for many institutions with no systemic relevance.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The one described above is a "case-by-case approach", which leaves too much room for discretion upon authorities and brings uncertainty to the system. As opposite to this view, which is general across all EU banking legislation and particularly within the CRR/CRD IV/RRF/DGS framework, we suggest that proportionality should follow a "structural approach" similar to the US case: clear rules, with the same rationale, but with different target levels depending on the nature, size, business and legal model of the intermediary.
Level 1 legislation should carry exact indications of limits and thresholds, identifying categories of banks to which certain different criteria apply, with no room for excessive level 2 or national level discretion. By doing this, a better protection of the single market in the EU would also be achieved, differentiating rules not by member State but according to business models and risk profiles of institutions.
Materially, as for example cited above, the CRR/CRD IV and the RRF should clarify the definition of systemic banks and apply the full burden of the legislation only to the subject deserving such treatment, due to their characteristics. For the others, simplified obligations should be clear cut, compulsory for the Authority to apply and certain for the market to acknowledge.

If you have further quantitative or qualitative evidence related to issue 10 that you would like to submit, please upload it here:

Issue 11 – Definitions

Different pieces of financial services legislation contain similar definitions, but the definitions sometimes vary (for example, the definition of SMEs). Please indicate specific areas of financial services legislation where further clarification and/or consistency of definitions would be beneficial.

How many examples do you want to provide for this issue?

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 11 (Definitions)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
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- ☐ Accounting Directive
- ☑ BRRD (Bank recovery and resolution Directive)
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)

- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☑ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ UCITS (Undertakings for collective investment in transferable securities)
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- ☐ Motor Insurance Directive
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- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
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- ☐ SFTR (Securities Financing Transactions Regulation)
- ☑ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Systemic relevance has become an important criterion in banking regulation. In the CRD IV / CRR it determines certain capital surcharges. In addition to globally systemically important institutions (G-SII) the list of which is published by the FSB, the EBA has been required to issue guidelines for the identification of other/domestic systemically important institutions (O-SII). In the Banking Union, the concept of systemic relevance determines whether a bank is subject or not to the direct supervision of the ECB under the SSM. Systemic relevance is defined in the Regulation (EU) No 1024/2013 in Art. 6 par. 4 along tree criteria:

(i) the total value of assets exceeds EUR 30 billion;

(ii) the ratio of total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of assets is below EUR 5 billion,

(iii) the national competent authority has not notified to the ECB that it considers an institution of significant relevance with regard to the domestic economy and the ECB has not taken a decision advocating the supervision of that credit institution.

The same definition of systemic relevance is assumed in the BRRD under Art. 4, par. 10. According to such provision, a systemic relevant bank, i.e. a bank

that meets one of the above criteria, cannot be subject to simplified obligations under the recovery and resolution framework. Being less significant equals to meeting any of the above criteria.
However, in the Commission Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU (the BRRD), another definition of less significant is introduced for the purpose of contributions to the resolution fund. According to the Delegated Regulation, a small bank i.e., a less significant or less relevant bank is a bank with total assets less or equal to 1 billion and the contribution base equal or less to 300 million.
Therefore, there is a quite clear inconsistency between criteria for the systemic relevance/irrelevance of a bank according to (EU) No 1024/2013 and Directive 2014/59/EU and criteria for the systemic relevance/irrelevance for the purpose of contributions to the resolution fund according to the Delegated Regulation (EU) 2015/63. This latter regulation suggests that an institution classified as less significant under BRRD, SRM and SSM should nevertheless be a significant bank for the purposes of contribution to the resolution fund. This seems contradictory and unsustainable since it does not give the proper weight, in determining the contribution to the Single Resolution Fund, to the concept of systemic relevance.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

not available

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The differentiation between systemic and not systemic banks in the calculation of contributions to the Single Resolution Fund should be revisited; one possible way forward would be to raise the limit that in the Delegated Regulation defines small banks namely 1 Bln of total assets and 300 Mio of contribution base.

If you have further quantitative or qualitative evidence related to issue 11 that you would like to submit, please upload it here:

Issue 12 – Overlaps, duplications and inconsistencies

Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

How many examples do you want to provide for this issue?

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 12 (Overlaps, duplications and inconsistencies)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- ☐ Accounting Directive
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial
- ☐ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)

- [x] Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [x] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PD (Prospectus Directive)
- [ ] PSD (Payment Services Directive)
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

There are strong interconnections between some of the new investors rules in MiFID II and PRIIPs. About that, we wonder if the investment firms should be exempted from providing the KID when they offer the service of individual portfolio management. In that case, in fact, the investment decision is entirely taken by the investment firm.
In our view the content of Recitals N. 23-24 ("what might be good time for the retail investor to understand and take into account the information may vary, because different retail investors have different needs, experience and knowledge. The person advising on, or selling, a PRIIP should therefore take into account these factors to determine the extent of the good time criterion in relation to individual retail investors. Where a person is advising on, or selling, a complex PRIIP or a PRIIP that is unknown to a retail investor, more time may need to be provided for the retail investor to familiarize itself with the PRIIP in question") and of Article 20 of the Draft RTS is not consistent and does not take into account the new regulatory framework of product governance within MiFID II, which requires distributors to:

- have in place adequate product governance arrangements to ensure that products and services they intend to offer or sell are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market;
- appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of

this process, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.
We therefore believe that Recitals N. 23-24 and Article 20 overlap MiFID II provisions on product governance obligations for distributors, which more adequately regulate the whole item of targeting the clients and the proper distribution strategy according to the characteristics of each investment product.
Furthermore, we believe that the prospectus summary and the KID have the same purpose: to provide key investor information.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

not available

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

In order to avoid an overlap and duplication of information that would confuse the customers, we support the proposal of eliminating the prospectus summary for those securities falling under the scope of the packaged retail and insurance-based investment products (PRIIPS) Regulation.

If you have further quantitative or qualitative evidence related to issue 12 that you would like to submit, please upload it here:

D. Rules giving rise to possible other unintended consequences

You can select one or more issues, or leave all issues unselected

- [x] Issue 14 - Risk
- [ ] Issue 15 - Procyclicality

Issue 14 – Risk

EU rules have been put in place to reduce risk in the financial system and to discourage excessive risk-taking, without unduly dampening sustainable growth. However, this may have led to risk being shifted elsewhere within the financial system to avoid regulation or indeed the rules unintentionally may have led to less resilient financial institutions. Please indicate whether, how and why in your view such unintended consequences have emerged.

How many examples do you want to provide for this issue?

○ **1** example ◉ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 14 (Risk)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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- ☐ MiFID II/R (Markets in Financial
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- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☑ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
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- ☐ MIF (Multilateral Interchange Fees Regulation)

- ☐ Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
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- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
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- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

EMIR Regulation introduces, inter alia, a clearing obligation through a central counterparty of OTC derivatives falling within the categories defined by ESMA according to the criteria set forth under the Regulation itself.
In particular, EMIR provides for the exemption of derivative contracts entered into between financial counterparties belonging to the same banking group or to the same institutional protection scheme; under art. 80(8) of Directive EC/2006/48 (CRD). Such intragroup operations are in any case subject to the obligation of reporting to Trade Repositories. Furthermore, the counterparties entering into an OTC derivative contract not cleared through CCPs (for being intergroup operations or not falling within the relevant categories of derivatives for the application) shall however procure that risk mitigation procedures are in place.
The most important matter for BCCs regards costs. BCCs - which will not be able to access compensation neither through indirect agreements nor as Clearing Members (or Clients of a Clearing Member) - will de facto not be able to keep an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives. With such regard, it is important to point out that BCCs, by explicit statutes' provision, can use derivatives only for hedging purpose.
The framework does not seem to appropriately reflect the application of the proportionality criterion. As a consequence, a small cooperative bank trading OTC derivatives, with a notional outstanding of hundreds of euros, exclusively for hedging purpose, is assimilated to a bank trading speculative derivatives with a notional outstanding of billions of euros.

BCCs, de facto, will not be able to maintain an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives to hedge their positions. Thus, small banks will virtually exit the hedging derivatives market, causing an increase of risks.

★ **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

For the purpose of providing an overall view of the OTC derivatives activity of BCCs, evidence gathered as at October 2015 shows that there were 149 banks active in OTC derivative, exhibiting a total of 3.877 trades, and an outstanding amount of Eur 3.4 bn. From such values, it follows that - on average - each bank had executed 26 trades summing up to an overall notional of Eur 22.6m, which amounted to about Eur 0.87m per trade. To better contextualize the above, please, consider that:

the vast majority of the cooperative banks shows a number of trades lower than 50;

the bank with the largest notional outstanding reported Eur 270m (corresponding to 51 trades);

the bank with the smallest notional outstanding reported Eur 500 (corresponding to one single trade).

Moreover, according to an impact assessment, carried out on a sample of 135 banks, the estimate annual cost of access to a CCP would be equal to 2,5 mln € notwithstanding the margin management with the CCP and its liquidity-related issues. In general, it might be estimated an annual cost for the entire system of Italian Credito Cooperativo of about 3 mln €, in relation to the poor activity of each bank is a significant amount.

With such respect, this trend is confirmed by evidence, indeed from 2012 to 2015 the number of trades is decreased and the outstanding is halved.

★ **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

In the light of the considerations illustrated above, we propose to introduce a total exemption from the clearing obligation for OTC derivative contracts entered into exclusively for hedging purposes, as already provided for the Non-Financial Counterparties (NFC). In the Regulation in force, indeed, such contracts are excluded from the calculation of the clearing threshold applicable to the NFC.

Example 2 for Issue 14 (Risk)

★ **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other

adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ Directive on non-financial reporting
- ☐ ELTIF (Long-term Investment Fund Regulation)
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- ☐ E-Money Directive
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- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
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- ☐ Transparency Directive
- ☐ UCITS (Undertakings for collective investment in transferable securities)
- ☐ Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Art. 25 -Early repayment: Member States have the possibility to rule that, in case of early repayment, the creditor is entitled to a fair and objective compensation for possible costs directly linked to the early repayment.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

The goal of the European legislator was to develop of a more transparent and efficient credit market; however many provisions involve also relevant economic features. Consequently, leaving to Member States the freedom to rule on economic issues may have different solutions for the same situations and generate distortive effects on a non-competition issue.
In case of early repayment, for instance, leaving to Member States the possibility to rule on this specific point, and in particular about the possibility for the creditor to be entitled to fair and objective compensation for possible costs directly linked to the early repayment, can create relevant differences between the different Member States. New rules will create some gaps on an anti-competitive behavior, towards Member States, reducing the level playing field in the Single Market on mortgage, by favouring banking institutions which - due to national legislation - can benefit from compensation in case of early repayment and can offer, consequently, lower prices and better interests rate.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We advocate for the deletion of such provision (in case of revision of the MCD) and, in general, for the future, we suggest not to leave Member States the possibility to rule on economic provision that can create differences in the market.

If you have further quantitative or qualitative evidence related to issue 14 that you would like to submit, please upload it here:

Useful links

Consultation details
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

Consultation document
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-documer

Specific privacy statement
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement_en

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

✉ financial-regulatory-framework-review@ec.europa.eu

European Union
Financial Services Committee

The Secretariat

Brussels, 12 January 2016

FSC

LIMITE

NON-PAPER

NOTE

From:	FSC Secretariat
To:	Financial Services Committee (FSC)
Subject:	Joint Non-Paper by DE and the UK::
	= On the importance of pursuing effective ways to implement the principle of proportionality within the EU prudential regime for banks

Please find enclosed a joint Non-Paper by Germany and the UK "*On the importance of pursuing effective ways to implement the principle of proportionality within the EU prudential regime for banks*", for consideration under agenda item 3 at the 21 January FSC.

DE-UK Non-Paper:

On the importance of pursuing effective ways to implement the principle of proportionality within the EU prudential regime for banks

The Basel regulatory framework was and is intended to address the risk to financial stability posed by large internationally active banks. Following the financial crisis, the Basel framework has become increasingly complex and correspondingly demanding to ensure compliance with. The first incarnation of Basel, introduced in the late 1980s, was 30 pages long. Basel III, on the other hand, covers over 500 pages, with additional technical annexes multiplying that number. While this complexity may be appropriate for larger, systemically important banks, it has made it harder for smaller and less complex institutions to cope and compete with larger banks. To manage this complexity effectively requires a high level of expertise to understand and then implement where applicable. In the EU, this issue is particularly pertinent as all credit institutions are subject to the entirety of the Basel framework.

The overall complexity of the current framework has some potentially very serious and undesirable effects that we believe warrant a thorough discussion with a view to coming up with appropriate policy responses in the EU. Our joint key concern is how we can maintain or reintroduce diversity in the banking sector. Diversity is desirable because:

- Different kinds of banks and business models contribute to the resilience of the financial system and thereby financial stability; and
- A regulatory framework that allows for diversity is more supportive of competition and innovation, helping consumers to get better products and the economy to be more productive.

Complexity in the regulatory framework, however, is a factor contributing to greater concentration in the sector and acting as a significant barrier to entry, thereby reducing diversity. Complexity also means that managers of less complex banks, often serving only a limited local area with a high level of expertise in the local economic conditions and the creditworthiness of their clients, have less time to focus on serving the economy, as they have to concern themselves more and more with ensuring regulatory compliance rather than taking effective business decisions.

Although on the face of it there is level playing field in terms of everyone having to meet the same rules, this does not lead to an actual level playing field – there is no competitive equality. In reality larger firms have a competitive advantage relative to smaller firms – they can spread the fixed costs of expertise required to understand and take advantage of this complex set of rules across a much larger cost base than smaller firms. A clear example of this is in terms of reporting requirements which make very little allowance for the differing burden they place on different sized firms.

Although the principle of proportionality is supposed to apply, in practice this has not been given any clear meaning. Since supervisors are in any case predisposed to err on the side of caution, there is a risk that this results in regulatory requirements imposed on small, less complex banks which are not in proportion to the risk that they pose to financial stability and the economy. This may have a negative impact on competition, lending (including to SMEs) and growth, thereby preventing the EU economy from reaching its full potential. Indeed, this may have an adverse impact on EU's global competitiveness as, for example, the US does not apply the Basel framework to local and state banks, which means these banks are better able to lend to the local economy and contribute to growth in the US economy and creating a competitive advantage over the EU.

Germany and the UK believe that now is an appropriate time for the EU to consider how to achieve a more proportionate and fit-for-purpose prudential framework for smaller / less complex banks and credit institutions. Any such regime would need to offer an equivalent level of protection, although we believe we should be open to consider whether there are different ways of arriving at that level of protection

There are a number of potential ways to achieve greater proportionality. These range from modifications to the current Basel / CRD IV regime, e.g. to scale back reporting, to coming up with truly simplified bespoke regime designed to nevertheless offer the same level of protection.

At this stage we would welcome an exchange of views on the impact that the current set of rules is having on smaller, less complex banks and their ability to support the economy. Also, it would be useful to get the views of FSC members on any principles that they believe any alternative, more proportionate approach should adhere to.

Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

Lord Jonathan Hill
European Commissioner
Financial Stability, Financial Services
and Capital Markets Union
Berlaymont Building
Rue de la Loi 200
B-1049 Brussels

Brussels, 24 February 2016

Dear Commissioner Lord Hill,

Over the past decade, the European Institutions have demonstrated increasing commitment to policies targeted at fostering the competitiveness of small and medium enterprises (SMEs), in the firm belief that SMEs represent the backbone of European economy.

In that respect, available data show that SMEs currently amount to more than 20 million in the euro area and are responsible for the employment of more than 80 million people. In percentage terms, this means that 2 out of 3 employed persons currently work in a small or medium enterprise.

Overall, SMEs currently account for 99.8% of European enterprises (microenterprises represent the 91.2%) and provide a vital contribution to growth and employment: this business sector generates 55% of the overall European GDP and is responsible for the employment of around 75 million European citizens.

In that respect, the measure on the capital requirements for credit risk for SME exposures - the so-called 'SME Supporting Factor' – is certainly one tool that can help SMEs play their role in driving economic growth. As established by that Regulation and for the exclusive purpose of ensuring an adequate credit flow to SMEs, credit institutions and investments firms benefit from lower capital requirements in order to boost growth in the credit flow to the SME sector.

In view of the periodic revision, we call on the European Commission to extend the application of the SMEs supporting factor. In fact, we firmly believe that, in a context of economic recovery, this measure can prove particularly effective for helping SMEs play their role in reducing the unemployment rate and boosting growth in the EU.

Yours sincerely,

Signatures:

Burkhard BALZ
EPP-Coordinator in the Committee on Economic and Monetary Affairs

Udo BULLMANN
Shadow Rapporteur on the Capital Requirements Regulation

Elisa FERREIRA
S&D-Coordinator in the Committee on Economic and Monetary Affairs

Sylvie GOULARD
ALDE-Coordinator in the Committee on Economic and Monetary Affairs

Roberto GUALTIERI
Chairman of the Committee on Economic and Monetary Affairs

Othmar KARAS
Rapporteur on the Capital Requirements Regulation

Marisa MATIAS
GUE/NGL-Coordinator in the Committee on Economic and Monetary Affairs

Kay SWINBURNE
ECR-Coordinator in the Committee on Economic and Monetary Affairs

Antonio TAJANI
Vice-President of the European Parliament

Michael THEURER
Shadow Rapporteur on the Capital Requirements Regulation

Marco VALLI
EFD-Member in the Committee on Economic and Monetary Affairs