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The new Single Resolution Mechanism for banks must ensure convergence and cooperation globally and across the EU.

The American Chamber of Commerce to the European Union (AmCham EU) remains a strong supporter of a European Banking Union. This goes not only for the Single Supervisory Mechanism (SSM), but also the proposals for a Bank Recovery and Resolution Directive (BRRD) and a Single Resolution Mechanism (SRM).

AmCham EU published its position paper on the SSM on 5 September 2012. The current paper focuses on the 10 July 2013 European Commission proposal for a regulation setting up a Single Resolution Mechanism and a Single Bank Resolution Fund.

American businesses represent an aggregate investment of €1.9 trillion and over four million jobs in the EU. From this stand point we are committed to the integrity of the European internal market and the success of the single currency. AmCham EU believes that creating a long term strategy for Economic and Monetary Union, including banking, economic, fiscal and political pillars, has the potential to restore investor confidence in the short term and financial stability in the long term, thereby restoring economic growth.

We therefore support the SRM proposal and its expected positive effect on the coherence of the eurozone and the integrity of the internal market.

Principles

AmCham EU fully recognises the acute need to break the link between banks and governments. The SRM proposal is the next step in achieving a “banking union” which is key to strengthening the monetary union, restoring confidence in the supervision of banks in the Euro area and decoupling banks from Member State risk.

The SRM proposal entails an alignment of the level of responsibility for supervision and resolution within the eurozone. This not only ensures better co-ordination but also underpins the integrity of the internal market and a level playing field between financial institutions in the EU as a whole (since the responsibility is already aligned at national level within non-participating Member States). As such the SRM proposal is not just a very important supplement to the SSM Regime for the eurozone but, like the SSM, will also have substantial relevance for the non-participating Member States.

We underline the need for global convergence and solutions that also work for firms operating globally. There must be an ability – built upon matching rules – to resolve banks on a global basis. This must allow for the most suitable resolution strategy for each firm, i.e. the single point of entry (SPE) or the multiple point of entry (MPE) approach, and in particular it must be possible to resolve an institution on a group basis, regardless of where it is headquartered.

We therefore believe that the new SRM regime must

1. Be consistent with the BRRD.
2. Establish a well-functioning resolution regime across the eurozone that can easily interact with non-eurozone Member States.
3. Provide a properly functioning third country regime by facilitating recognition between EU and non-EU resolution regimes and by recognizing a group approach to resolution, regardless of where the group is headquartered.

Ensure consistency between the SRM and the BRRD

The BRRD and the SRM are two highly interrelated parts of the overall European Banking Union project. The BRRD is an EU-28 proposal but it also contains specific resolution tools, including bail-in, that are to be used by the eurozone Member States covered by the SSM and SRM proposals.

In this respect it is very important to avoid inconsistencies between the two proposals. Preservation of the single market requires coherence between the single rule book provided by the BRRD and the SRM. Therefore we believe the BRRD articles need to be better reflected in the SRM; for instance by ensuring a common approach to bail-in (including Minimum Requirements for own funds and Eligible Liabilities, or MREL) and the creditor hierarchy inside and outside the SRM.

Furthermore, the BRRD articles 84-88 deal with the cooperation with third countries and the recognition of third country resolution proceedings.

These articles are not fully reflected in the SRM proposal. See below for more detailed remarks on this.

Secure a well functioning interaction with non-eurozone Member States

The proposed SRM goes further than the SSM by covering not only the most systemic eurozone banks and banking groups, but all of the 6000 eurozone banks.

While non-eurozone Member States have the option to join the SSM (thereby ensuring that banks established within their territory become subject to the SRM), it follows from the proposal that banks established in non-participating Member States continue to be fully covered by the rules laid down in the

BRRD. We also note that the interaction between the SRM and the national resolution authorities in non-participating Member States will be governed by the BRRD provisions.

The failure of banks within the eurozone could have substantial implications for the stability of the financial markets in other Member States. Since we represent business interests that have a significant presence both within and outside the eurozone, we attach great importance to seamless interaction between the SRM and the national competent authorities of non-participating Member States.

We therefore welcome the clear statement in the SRM proposal (Recital 18) that the same resolution rules must apply, regardless of whether they are taken by the national resolution authorities under the BRRD or within the framework of the SRM mechanism, to safeguard the integrity of the internal market. In this respect we also believe it is very important that all such measures for resolution financing are subject to a Commission assessment under Article 107, TFEU (the state aid rules or an analogy thereof).

For situations where a bank that operates both within and outside the eurozone fails, we strongly support the principle of non-discrimination as outlined in Article 6 of the SRM draft. This forbids any discrimination by the Commission, the Single Resolution Board and the national resolution authorities against banks, their depositors, creditors or shareholders on grounds of nationality or place of business. We also note the role granted in Article 8 (on the assessment of resolvability) to national resolution authorities from non-participating Member States where significant branches are located.

In the case of cross-border groups, we welcome the provision in Article 30 which states that the Single Resolution Board will represent the national resolution authorities of the participating Member States when cooperating with authorities of non-participating Member States. This will provide non-members with a single eurozone interlocutor and has potential to ensure easier and quicker coordination in urgent resolution situations.

Provide a properly functioning 3rd country regime

As businesses operating globally, we strongly believe that the SRM proposal must take global convergence and recognition into account. As with the SSM proposal, the SRM also helps to simplify the decision-making process in the eurozone and can provide third country authorities with a single point of contact.

Ensuring that rules around resolution prioritise global convergence and openness would significantly benefit global markets. We therefore welcome the SRM proposal's recognition that many financial institutions operate not only within the EU but also internationally.

In our view, the SRM should take this further and specifically allow a group approach to resolution – and an SPE model for bail-in regardless of where the group is headquartered.

Furthermore, we are concerned to ensure the compatibility between US single-point-of-entry and the BRRD/SRM rules, most specifically on the topic of cross defaults. It is essential that the final BRRD prohibit counterparties of EU subsidiaries or branches from asserting that the receivership of a non-EU holding company constitutes an event of default by such EU subsidiaries or branches. The BRRD text is developing constructively in this regard, but the SRM is silent on this critical matter.

On the procedural side, we are pleased that the SRM proposal underlines the need for a list of principles for cooperation with third country authorities. Specifically, Recital 51 and Article 31 state that support to third country authorities should be provided in accordance with the legal framework provided by Article 88 of the BRRD. The SRM also entrusts the Commission and the Single Resolution Board (each within their respective fields) to be exclusively responsible for concluding, on behalf of the participating Member States, the non-binding cooperation arrangements referenced in BRRD Article 88 (4).

However, the BRRD deals with third country cooperation and recognition in several articles other than Article 88. The BRRD Articles 85-87 deal with the recognition of third country resolution proceedings, the right to refuse recognition of such proceedings and the resolution of Union branches of third country institutions. These important elements of the BRRD are currently not referred to or dealt with in the SRM.

In AmCham EU's view, the SRM proposal must *inter alia* reflect the BRRD provisions on the practical aspects of authority to enter into agreements with third countries and also deal with the objectives and content of such agreements, including the recognition of third country resolution proceedings. At a minimum, there should be a reference to the BRRD Articles (85-87) and how these provisions interact with the SRM proposal.

Conclusion

AmCham EU, as a representative of businesses with substantial interests in Europe, supports the on-going efforts to create a European Banking Union. We therefore support speedy progress on this proposal in line with the conclusions of the 27-28 June European Council that set the target of reaching agreement on the mechanism by the end of 2013.

However, we reiterate the importance of the SRM mechanism clearly recognizing the need for a properly functioning third country regime. Also, the SRM should enable well functioning and non-discriminatory cooperation between EU resolution regimes within and outside the eurozone, thereby ensuring a continued level playing and the integrity of the internal market.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.

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POSITION STATEMENT