Brussels, 23rd December 2021

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EACB comments on the European Commission banking package "*Aligning EU rules on capital requirements to international standards*"

Proposal for a directive – COM(2021)663

2021/0341 (COD)

The EACB particularly notes that the amendments to the CRD are not limited to complementing the Basel reforms but are rather sweeping, extending in many respects the powers of supervisors, from fit & proper assessments to new sanctioning tools to acquisition transactions. We find the extension inadequate in some cases.

With regard to ESG risks, supervisory discretion should not be left unchecked. The wording of certain provisions leaves a very wide room for interpretation, especially when looking at the stated possibility of risks of misalignment "*with the relevant Union policy objectives or broader transition trends towards a sustainable economy*" (Art. 76(2), 87a, 104(1)(m)). Broad consideration of policy objectives and transition trends for supervisory action would leave institutions unable to properly define how to chart their strategy and milestones and to which supervisory expectations to adhere, supervisors would be left without clear guidance too. The ESG mandate in the SREP is already targeted to address ESG risks and ensure that banks actively and substantially contribute to the transition.

The proposals in the area of governance, fit&proper requirements, reveal far reaching as well.

We do not agree with the EC's plans to harmonise the timing of the fit&proper assessments. It should remain in discretion of MS. We reject proposals for an assessment of the key function holders by the authorities. Any reform tackling an evaluation of directors should aim in the first place at ensuring timely processes and respect for constitutional and labour rights of candidates, i.e. right to appeal and termination conditions.

In addition, we are concerned that the requirements in Article 88(3) to map and keep individual statements of duties of the members of the boards are contrary to the collegial liability of the board which is the legal standard in some MS.

The description of the positions (3(8a), 3(9)) should be elaborated in view of the existing differences in the corporate laws and clearly attachable to concrete persons – this is crucial for the sake of legal clarity and correct implementation of the requirements, avoiding a too broad scope.

Any new requirement should be adequately considered in light of the principle of proportionality. We believe that the current proposal is not sufficiently explicit on this (e.g. Art. 21, 91a to d) and should give more recognition to existing arrangements in groups like cooperative ones (e.g. banks affiliated to a central body).

We are critical about expanding EBA mandate in the area.

The current practice of supervisory authorities regarding capital add-ons due to the SREP outcome impedes institutions to reconstruct which of the imposed additional own funds requirements are allocated to the respective risks not covered under Pillar 1. Supervisory authorities impose an overall SREP-add-on without allocating the additional own funds to the concrete additional risks. This lack of transparency makes it elusive for the institutions to understand how supplementary

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own funds relate to specific risks and make it impossible to raise legal actions against a decision by supervisory authorities. We believe that supervisory authorities should have to clarify in their SREP decisions that (possible) capital add-ons are assigned to specific risk exposures with concrete amounts. Such specification would significantly improve transparency, clarity and credibility of the SREP. This would also allow to dispel existing doubts that certain risks, which are covered under macroprudential buffers, are double counted in the microprudential requirements.

To keep an overall balance, discussions should progress in parallel on the entire proposal. Even if some CRR/BRRD items require technical changes, they should not be treated under fast-track procedure, or the urgent procedure should encompass all technical changes/corrections necessary in the current framework.