

Follow up to the European Parliament non-legislative resolution on Banking Union – annual report 2019

1. **Rapporteur:** Pedro MARQUES (S&D/ PT)
2. **Reference numbers:** 2019/2130 (INI) / A9-0026/2020 / P9_TA-PROV(2020)165
3. **Date of adoption of the resolution:** 19 June 2020
4. **Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)
5. **Brief analysis/assessment of the resolution and requests made in it:**

This is the fifth annual report on the Banking Union, dealing with a range of different issues that arise in that context. Of particular note, the resolution:

- Welcomes the support of the President of the Commission for the completion of the Banking Union and, more broadly, the Economic and Monetary Union, including through the creation of a Budgetary Instrument for Convergence and Competitiveness (BICC).
- Regrets that Member States continue to act outside the Community framework through the **Eurogroup**, jeopardising the Parliament's role as co-legislator and its right to democratic oversight. The resolution highlights the lack of efficacy of the intergovernmental negotiations conducted thus far, most notably those involving the Budgetary Instrument for Convergence and Competitiveness and the Eurogroup's Banking Union High Level Working Group. The resolution expresses concern that the European Parliament has not been kept informed of discussions taking place in the context of the High-Level Working Group on European Deposit Insurance Scheme (EDIS) including on crisis management. The resolution recalls Article 9 of the 2010 Framework Agreement, which contains the obligation for the Commission to guarantee equal treatment, particularly on legislative matters, between the Parliament and the Council. The resolution urges negotiations to continue in an open setting that guarantees Parliament's active involvement, within the legal order of the EU, resulting in increased judicial protection and stricter requirements regarding transparency and access to documents.
- Welcomes the efforts made to strengthen the financial sector and reduce Non Performing Loans (NPLs) at European level and the **risk reduction** measures achieved in the recent Banking Package, whilst stressing that further progress has to be made on **risk sharing** and on risk reduction in order to tackle challenges that remain in specific institutions.
- Welcomes the overall increased resilience of the European banking system but stresses that profitability levels remain low, the macroeconomic environment is deteriorating in view of the COVID-19 pandemic and that low interest rates persist. The resolution notes that a high level of competition, especially in the area of **financial technology** (FinTech), as well as higher operational risks due to digitalisation and innovation, and the lack of integration of markets due to remaining fragmentation between Member States, are expected to pose further challenges to bank profitability. Economic slowdown and geopolitical tensions, including the effects of the UK withdrawal from the EU, as well as cyber risks and data security, are among the major challenges the EU banking sector is

facing, in addition to climate change and the risks of money laundering and terrorism financing. Challenges to profitability are not expected to abate in the short term.

- Welcomes the efficiency and broader range of choices that innovative financial technologies offer to consumers in the market and supports technological neutrality as a guiding principle and encourages investments in financial technology.
- Highlights the need to address the challenges posed by these new technologies and underlines the responsibility of financial institutions in ensuring the protection of clients' data and their security. The resolution also notes the increasing reliance of the banking sector on cloud computing and urges the Commission to respond to the joint advice of the European Supervisory Authorities (ESAs) on the need for legislative improvements relating to ICT risk management requirements in the EU financial sector.
- Emphasises that the provision of credit and liquidity by banks plays a decisive role in mitigating the most severe economic consequences of the **COVID-19** and notes the **legislative and supervisory measures** that have been proposed or adopted to make sure that banks keep lending throughout this crisis. The resolution also welcomes the flexibility given to banks in relation to the prudential treatment of loans, the application of accounting rules, and the release of capital buffers and supports the actions taken by banking supervisors to introduce strong temporary restrictions on the payment of dividends and bonuses and the buying back of own shares by banks.
- Underlines the crucial role of the banking sector in channelling funding into the real economy, and particularly into sustainable and socially responsible investments, thereby fostering growth and employment and enabling the transition to a climate-neutral economy, while not endangering financial stability. The resolution welcomes the political agreement reached on the Regulation on the establishment of a framework to facilitate **sustainable investment**¹ and calls for the revision of the **Non-Financial Reporting Directive**² in order to better reflect the environmental, social and governance (ESG) related reporting and disclosure obligations. The resolution also expresses concern at the vulnerabilities of banks to climate-related risks, which may not be fully comprehended and welcomes the European Banking Authority's (EBA) commitments to include climate risk considerations in its annual risk assessment and to introduce climate change stress tests, underlining the importance of adequate disclosure and risk assessment.
- Calls, furthermore, on all European banks to sign up to the UN-led Principles for **Responsible Banking** and, accordingly, to report annually on their efforts to implement sustainable financing and to reduce climate change-related risks in their balance sheets. The resolution also calls on the EU institutions and national competent authorities responsible for the banking sector to follow and, where possible, implement the recommendations of the Principles for Responsible Banking, the Sustainable Banking Network and the Network of Central Banks and Supervisors for Greening the Financial System.

¹ Proposal for a regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, COM/2018/353 final

² Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

- Calls for the establishment of a **EU-wide green bond standard** and the definition of a framework favourable to the development of these bonds in order to enhance the transparency, effectiveness and credibility of sustainable investments.
- Stresses that the EU regulatory framework on **prudential treatment of sovereign debt** should be consistent with international standards.
- Calls for further discussions on the creation of a **European safe asset**, based on an evaluation to be performed by the Commission of the **sovereign bond-backed securities (SBBS)** proposal and possible developments, in order to strengthen the international role of the euro, stabilise financial markets and allow banks to diversify their portfolios.
- Stresses the importance of preparedness of banking supervisors for all possible outcomes after the **UK withdrawal**, bearing in mind that this complements preparedness of private actors themselves. The resolution notes the practice of UK firms of establishing branches in the EU and stresses the risk of regulatory arbitrage due to the diverse application of national rules. The resolution therefore considers that further harmonisation is required to avoid regulatory arbitrage and to ensure that risks are appropriately addressed. The resolution underlines the importance of level playing field in financial regulations between the EU and the UK and the need to prevent a regulatory race to the bottom. The resolution reiterates the EU-UK commitments under the Political Declaration and to maintain close and structured cooperation on regulatory and supervisory matters, at both political and technical levels.
- Regrets that the Commission and the large majority of EU governments have so far failed in ensuring full **gender balance in EU institutions and bodies**, particularly with regard to high-level appointments in economic, financial and monetary affairs. The resolution calls on the governments of the Member States, the European Council, the Eurogroup and the Commission to actively work towards gender balance in their upcoming proposals for shortlists and appointments, endeavouring to include at least one female and one male candidate per nomination procedure.
- Stresses the importance of completing the **Capital Markets Union**, which complements the Banking Union and which would allow for public and private risk sharing, strengthen the international role of the euro as well as further for enhancing the competitiveness of European markets and promoting sustainable private investment. The resolution highlights the need for a level playing field that avoids disadvantages for small and medium sized enterprises (SMEs) in terms of access to finance, and the need to carefully monitor the issuance of securitised products.
- Considers that the current supervisory framework has focused primarily on credit risk exposures, to the detriment of market risk exposures related to illiquid securities, including derivatives. The resolution urges for adequate measures to enhance asset quality review, and welcomes, the inclusion of **level 2 and level 3 instruments** in the scope of the 2018 stress tests. The resolution reiterates the call on the European Central Bank (ECB) to include among its main supervisory priorities the reduction of these complex and illiquid financial instruments, including derivatives.
- Welcomes the significant progress in non-performing loan reduction, though pointing out that the level of non-performing loans still remains high in certain institutions and that further efforts are needed to address this issue. The resolution takes note of the ongoing legislative work on the Directive for credit servicers and credit purchasers, and stresses the need to make sure that the development of secondary markets for loans and the

creation of an extrajudicial enforcement mechanism (AECE) include appropriate consumer protection.

- Notes the importance of the full implementation of the **Mortgage Credit Directive** (2014/17/EU) and calls on Member States to put measures in place to ensure that borrowers, who might be in already vulnerable financial situations, are not subject to aggressive and unfair treatment and practices by poorly-regulated debt buyers and collectors.
- Calls on the Commission, in the upcoming revision of the **Consumer Credit Directive** (2008/48/EC), to lay down more ambitious provisions on the protection of borrowers against abusive practices, ensuring that those rights apply equally to existing and future loans.
- Calls on the European Banking Authority to devote more focus to fulfilling its mandate on properly collecting, analysing and reporting on **consumer trends**, and also on the review and coordination of financial literacy and education initiatives by the competent authorities. The resolution calls on the European Supervisory Authorities to make full use of their powers to ensure a high degree of consumer protection, including, where appropriate, product intervention powers where financial and credit products have resulted in or are likely to result in consumer detriment.
- Calls on supervisory and resolution authorities to vigorously enforce the newly introduced **Bank Recovery and Resolution Directive (BRRD)** (2014/59/EU) **provisions on consumer protection**, particularly the Minimum Requirement for Own Funds and Eligible Liabilities (MREL) and urges the Commission to further assess the issue of miss-selling of financial products by banking institutions.
- Stresses that the Basel Committee on Banking Supervision (BCBS) standards should be transposed into Union law in a timely fashion and with due regard for their goals, while taking proper account of the specific characteristics of the European banking system, where appropriate, and the proportionality principle. The resolution warns that, owing to the diversity of banking models across the EU, a one-size-fits-it-all solution might be ill-suited to the European market. It also underlines that the competitiveness and financial stability of the EU banking sector should be ensured and its ability to finance the economy, in particular SMEs, should not be harmed. It calls on the Commission to act on the recommendations in European Parliament's resolution of 23 November 2016 on the **finalisation of Basel III** when drafting the new legislative proposals.
- Takes note of the findings of the targeted review of **internal models** (TRIM) carried out by the ECB and calls on banks to improve their use and implementation of their internal models accordingly.
- Expresses its concern that the European Banking Authority warned about not delivering its proposals for **reducing the administrative burden for small institutions** within the deadline set by co-legislators in the Banking Package.
- Recalls that standards provided by international fora should avoid regulatory fragmentation and help to promote a level playing field for all internationally active banks.
- Notes that in its report assessing the risks to and vulnerabilities of the EU banking sector, the European Banking Authority points to differences in the application and setting of the **Other Systemically Important Institutions (O-SII) buffer** among Member States; calls,

thus, for further harmonisation of the application of capital buffers across the EU, in order to create a level playing field.

- Welcomes the agreement on a **Memorandum of Understanding between the European Central Bank and the European Court of Auditors**, setting out the practical arrangements for the exchange of information between the institutions in respect of their respective mandates.
- Requests **increased transparency standards in banking supervision**, for instance in the outcomes of the supervisory review and evaluation process, in order to reinforce the trust of capital and financial markets, companies and citizens, as well as to ensure consistency of treatment across Member States.
- Highlights, however, that there is considerable interconnectedness between the **non-bank financial intermediation sector** and the ‘traditional’ banking sector, which raises concerns of systemic risk given the lack of appropriate regulation and supervision of the former. The resolution calls for coordinated action to address these risks, including the establishment of a macroprudential toolkit and the further operationalisation of existing tools to counter threats to financial stability posed. The resolution considers that it is necessary to assess whether prudential requirements on large exposures in particular to non-bank financial intermediation are sufficient to ensure financial stability and underlines further the risks highlighted by the European Systemic Risk Board (ESRB) in its EU Non-bank Financial Intermediation Risk Monitor 2019, such as those derived from liquidity transformation, risk-taking and leverage affecting the sector more broadly.
- On **anti-money laundering** (AML):
 - Welcomes the agreement on the exchange of information between the ECB and the authorities responsible for anti-money laundering and combating the financing of terrorism (CFT).
 - Highlights that prudential and anti-money laundering supervision need to be better aligned and recalls its serious concerns about regulatory and supervisory fragmentation in the field of anti-money laundering/ combating the financing of terrorism (AML/CFT), which has led to a failure to provide adequate oversight and responses to the deficiencies of national supervisory authorities and undermines their ability to supervise the increasing cross-border activity in the EU.
 - Is convinced that the ECB also has a role to play in combatting money laundering and welcomes the setting-up of a dedicated anti-money laundering unit.
 - Notes in particular the complexity of carrying out the important suitability assessment of the top management of banks due to the highly diverse transposition of the Capital Requirements Directive (2013/36/EU) and therefore encourages the integration of the ‘fit and proper’ requirements into the Capital Requirements Regulation.
 - Welcomes the Council conclusions of 5 December 2019 and welcomes the Commission’s communication on an Action Plan which outlines proposals to further harmonise the anti-money laundering/ combating the financing of terrorism (AML/CFT) rulebook and effectively address the risks posed by cross-border illegal activity to the integrity of the EU financial system and the security of EU citizens, namely through the creation of a new EU body.
 - Acknowledges that legal and supervisory action needs to be taken to address the money laundering and terrorism financing risks posed by crypto assets and invites the

Commission to further carry out impact assessments on the money laundering and terrorism financing risks that may arise from vulnerabilities created by the increasing use of new technologies by credit and financial institutions, and the rapid spread of crypto assets in view of the absence of a common regulatory regime and the anonymity associated with those assets.

- Calls on the Commission to evaluate in 2020 the current state of the **credit rating agencies** market, to assess it in terms of competition, information asymmetries and transparency to the markets. The resolution also notes that sustainability ratings based on environmental, social and governance (ESG) criteria may become an important complement to credit risk assessments and stresses the importance of standardisation in the criteria for sustainability rating and ensuring that the development of a market for the provision of sustainability ratings is competitive and not concentrated with a limited number of providers.
- States the need for efforts to make financial market activity more consistent with **sustainability objectives and environmental, social and governance (ESG) criteria**, underlining the central role of the European Supervisory Authorities in these objectives. The resolution calls on the European Banking Authority in coordination with the European Systemic Risk Board (ESRB), to take steps towards a common methodology for measuring the intensity of climate risks to which financial institutions are exposed, including risks related to the possible depreciation of assets in the event of changes to the regulatory treatment stemming from climate change mitigation and adaptation, the macroeconomic impact of sudden changes in energy use and a rise in the incidence of natural catastrophes.
- Invites the Commission to reflect on the appropriate follow-up to its report on the implementation of **Bank Recovery and Resolution Directive (BRRD)** (2014/59/EU) and **Single Resolution Mechanism Regulation (SRMR)** (806/2014) of April 2019, urging the Commission to review whether the legislation is adequate to ensure that all banks could, if needed, be resolved without the need for taxpayers' money.
- Calls on the Commission to take into account the Financial Stability Board review of the **'too big to fail'** legislation and address potential shortcomings, in particular with regard to the safeguarding of retail deposits.
- Calls on the Single Resolution Board (SRB) to complete the process of establishing resolution plans and analyse if all relevant banks hold sufficient **minimum requirement for own funds and eligible liabilities (MREL)**. The resolution also notes that the Single Resolution Board (SRB) does not regularly disclose the extent to which banks comply with MREL targets.
- Invites the Commission to reflect on the potential for further harmonisation of specific aspects of existing **national insolvency laws** and to assess the extent to which such further harmonisation is necessary to ensure a consistent and effective application of the crisis management framework.
- Calls on the Commission, in the framework of the revision of the Deposit Guarantee Scheme Directive (DGSD) (2014/49/EU) to bring more clarity to the **least-cost principle** under that directive.

- Calls for further reflection on the Single Resolution Mechanism's framework and the need to assess the applicability of the **Banking Communication** of 2013³.
- Notes the need to ensure a level playing field and the consistent application of the **public interest test**.
- Notes the important role of **early intervention measures** and that the requirements for the use of such measures overlap with some of the standard intervention measures of the ECB and stresses that in such instances, standard intervention measures are favoured. The resolution considers that this overlap should be removed by way of the sufficient clarification of the legal basis for each instrument, in order to ensure the gradual application of the measures.
- Calls for the creation of the **backstop to the Single Resolution Fund (SRF)** and its swift operationalisation, taking note of the Eurogroup decision on the 'agreement in principle' related to the reform of the European Stability Mechanism and its terms of reference.
- Expresses its concern of the lack of a mechanism in the Banking Union to ensure that **liquidity in resolution** can be provided to a bank to ensure the smooth continuity of services and the stability of financial markets, and calls on the Commission to attempt to address this gap without further delay.
- As regards **home-host issues**, stresses the fact that banks need to be able to operate across borders while managing their capital and liquidity at a consolidated level, in order to diversify their risks and address any lack of profitability. The resolution considers that rules should allow for greater flexibility for the parent company in this regard, while providing for credible and enforceable mechanisms that require, in the event of a crisis, the parent company (resolution entity) to provide capital, Minimum Requirement for Own Funds and Eligible Liabilities, and liquidity to subsidiaries located in a host country within the Banking Union.
- Urges the completion of the Banking Union through the creation of a fully implemented **European Deposit Insurance Scheme (EDIS)**, urging the Council to resume negotiations on EDIS as soon as possible, while ensuring a coherent framework with the Deposit Guarantee Scheme Directive (DGSD). The resolution also calls on the Commission to analyse the framework of functioning institutional protection schemes in the context of EDIS.

6. Response to the requests and overview of the action taken, or intended to be taken, by the Commission:

The Commission welcomes the 2019 Banking Union Annual resolution and the Parliament's acknowledgment on the major steps taken in several critical areas as well as its call for the completion of the Banking Union, which remains a key priority also under this Commission, including European Deposit Insurance Scheme and a common backstop to the Single Resolution Fund (SRF). In the current context, with the EU facing an unprecedented recession following the COVID-19 crisis, the completion of the Banking Union is even more indispensable than in the past and there is a need to move forward ambitiously also on the risk sharing aspects of the Banking Union.

The Commission welcomes the efforts of Member States in the context of the Eurogroup's High-Level Working Group, to work on a way forward to break the current stalemate in the

³ OJ C 216, 30.7.2013, p. 1

discussions on the Banking Union. The work last year in the context of the Eurogroup's High Level Working Group on EDIS has allowed further development of the **long-term thinking of the Banking Union**. While participating in these discussions, the Commission fully reserves its right of initiative and reminds of its Treaty-based independence. The Commission fully acknowledges the role of the European Parliament under the Treaties and is conscious of its obligations under the Framework Agreement. The Commission regularly participates in European Parliament Committee and Plenary meetings on this topic and the discussions within the Council's Ad Hoc Working Party on EDIS, in a co-legislative setting. The Commission would very much welcome further progress on EDIS both at the Council's Ad Hoc Working Party but also at the European Parliament.

Regarding the **Budgetary Instrument for Convergence and Competitiveness (BICC)**, the Commission thanks the European Parliament for the work on this file in the joint ECON (Economic and Monetary Affairs) and BUDG (Budgetary) committees and the excellent collaboration with the rapporteurs. The Reform Support Programme has now been withdrawn and has been replaced by the Recovery and Resilience Facility (RRF). Given that the RRF built on discussions on the Reform Support Programme, early discussion by the European Parliament on the RSP will allow rapid progress in the negotiations of the RRF with both co-legislators, which is essential to be able to start the implementation of the Facility by 1st January 2021. The Commission stands ready to provide any clarification and support that the Parliament would require.

The Commission agrees with the analysis of the **challenges faced by the EU banking sector**, in particular in terms of low profitability relative to banks' own cost of capital and the profitability of their peers. This requires updating of banks' business models and continued efficiency gains, including, where appropriate, by consolidation within and across borders. The Commission remains committed to assessing the impact of financial regulation on the availability and cost of financing for the EU economy, including its SMEs.

The Commission agrees that banks play a key role in managing the economic shock that stems from COVID-19 and preparing for a swift recovery by maintaining the flow of credit to businesses and households. It welcomes the capital, liquidity and operational relief provided by supervisors in response to the economic and financial distress caused by the pandemic. To give as much certainty as possible on the regulatory framework at the current juncture, the Commission has issued an Interpretative Communication on 28 April 2020, which confirms the regulatory flexibility highlighted by EU authorities and international bodies, and encourages banks to make use of this flexibility with a view to continuing to finance the real economy, while asking them to maintain prudent distribution policies. To further enable banks to play their critical role in supporting people and businesses, the Commission proposed temporary and targeted changes to specific aspects of the bank prudential framework. The Commission welcomes that the Parliament and the Council have swiftly reached an agreement on these changes, which became effective on 27 June 2020 and thereby apply already to banks' supervisory reporting on the second quarter of 2020.

The Commission agrees that **financial technologies** pose opportunities and challenges for banking in the EU. The Commission has adopted on 23 September 2020 a Digital finance strategy in the third quarter of 2020 to ensure that the EU realises the opportunities stemming from the digital transformation while addressing risks in a proportionate manner. It is accompanied by a legislative initiative on digital operational resilience and a legislative initiative on crypto assets, in response to calls for follow up to the ESAs advice.

The Commission welcomes the adoption of the **Regulation on the establishment of a framework to facilitate sustainable investments (the EU taxonomy of environmentally**

sustainable economic activities) and the support of the resolution on the need to revise the **Non-Financial Reporting Directive (NFRD)**. As part of the Green Deal, the Commission will review the NFRD by the first quarter of 2021. The Commission believes that it is crucial to promote sustainable private investments. The Commission also takes note that sustainability ratings based on environmental, social and governance (ESG) criteria might become an important complementary assessment to credit risk assessments. The Commission services are following closely the developments in the market for sustainability ratings and agree with the need for a level playing field. Efforts need to be made to better align financial market activity with sustainability objectives and environmental, social and governance (ESG) criteria. Moreover, the Commission will also adopt in the last quarter of 2020 the renewed sustainable finance strategy, which is part of the European Green Deal and will be an integral part of the EU's response to the financial challenges stemming from our climate and environmental targets in the context of the post-COVID-19 recovery. A green recovery is indispensable to prevent massive disruption related to the consequences of climate change. Sustainable finance and the renewed strategy have a critical role to play in improving the resilience of our systems and reaching the opportunities related to the low carbon transition.

The Commission welcomes the call for the establishment of an EU-wide green bond standard. The Commission is working diligently to take this file forward, and has a targeted consultation ongoing on the EU Green Bond Standard, which will close on 2 October. Depending on the outcome of this consultation and the impact assessment, the Commission hopes to come forward with a legislative proposal in the first half of 2021.

The Commission shares the view that the current **regulatory treatment of sovereign exposures** in the EU is in line with international standards. The Commission takes note of the call for and is indeed conducting further analysis of possible designs for a common European safe asset, which could help increase financial sector efficiency, resilience and integration, facilitate the conduct of monetary policy, spur cross-border private sector risk sharing, help the funding of the transition to a climate-neutral and smart economy, and bolster the appeal of the euro as an international reserve currency.

Regarding the **UK's withdrawal from the EU**, the Commission agrees that both private actors and supervisors need to complete their preparations to adapt to the new situation, which will start in January 2021. The Commission is constantly reminding market participants that it is their primary responsibility to be ready for the end of the transition period and mitigate possible consequences and costs created by the future application of two independent regulatory and supervisory frameworks⁴. On concerns related to UK firms' practices and regulatory arbitrage risks linked to various national third country regimes, the Commission agrees with the report on the importance of supervisory and regulatory convergence and welcomes the recent improvements to preserve the integrity of EU's financial markets (e.g. new safeguards introduced by the Investment Firm Review package). The Commission also agrees with the importance of level playing field in financial services and of close and voluntary cooperation on regulatory and supervisory matters and therefore welcomed the Council mandate for the EU-UK negotiations, stressing that the future partnership must ensure open and fair competition, encompassing robust commitments to ensure a level playing field, given the EU and the UK's geographic proximity and economic interdependence.

⁴ See the European Commission dedicated webpage on Getting ready for the end of the transition period, https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en

As regards the **gender balance in EU institutions and bodies**, currently, 41% of the Commission management are women. In its Gender Equality strategy 2020-2025, adopted on 05 March 2020, the Commission confirms its President's commitment to reach gender equality at all management levels by 2024. The Commission also considers that other EU institutions and bodies should not be exempt from ensuring gender balance in leadership positions. With respect to the agencies and bodies in the area of economic, financial and monetary affairs where the Commission is responsible for establishing a shortlist of candidates to be put forward to the relevant appointing authorities, in addition to encouraging applications from women in its advertisements in the international press, the Commission stands ready to:

1. review the eligibility criteria with the objective of attracting a higher number of female applications; and
2. strive, whenever possible, to include at least one female and one male candidate in the shortlist.

The Commission is committed to making tangible progress on the **Capital Markets Union (CMU)**. It set up a High Level Forum (HLF) bringing together 28 senior experts on capital markets to help identify main challenges and opportunities and ways to address them. The Final Report with recommendations for concrete actions was published on 10 June 2020. The HLF put forward 17 targeted recommendations on how to take the CMU work forward, focusing on three main areas: (i) financing for businesses, in particular SMEs, (ii) supporting retail investment, and (iii) improving market infrastructure. The Commission has built on this work to prepare its next Capital Markets Union (CMU) Action Plan, adopted on 23 September 2020.

As regards dealing with non-performing loans (**NPLs**), due attention has to be given to the real-economy effects of the COVID-19 crisis, which is bound to generate an increase of NPLs. A comprehensive strategy is needed to help banks address this issue at an early stage. As this would require close cooperation among Member States and European authorities, the Commission will liaise with, and coordinate among relevant stakeholders, from the public as well private sector.

The proposed **Directive on credit servicers, credit purchasers and the recovery of collateral** establishes rules for the authorisation and supervision of credit purchasers and credit servicers (i.e. a secondary market for NPLs), as well as for the extrajudicial recovery of collaterals (i.e. accelerated extrajudicial collateral enforcement mechanism - AECE). As regards the secondary market for non-performing loans (NPLs), the proposed directive introduces specific additional safeguards for borrowers, including defences available on consumer credit to mortgage credit (see below). As national rules continue to apply and provide protection to consumers, it is also undisputed that Member States can reinforce their consumer protection rules if they deem it necessary. The Commission welcomes the quick progress of negotiations made by the Council (who agreed on a partial general approach in March 2019 covering the part on secondary market of NPLs) and hopes to start trilogues on this part as soon as possible. The Commission urges the European Parliament to make progress on the proposed directive as a matter of priority, in view of its importance to deal with COVID-19-related NPLs. As regards the call for adequate consumer protection, the provisions on AECE in the proposal for a Directive exclude loans where the debtor is a consumer from its scope. Similarly, cases where enforcement would be against primary residences of entrepreneurs are also excluded from the scope. The protection of consumers is therefore an inbuilt feature of this proposal.

The Commission agrees with the need to protect **consumers' rights** in the context of the NPL transactions. For this reason, in its proposal on credit servicers, credit purchasers and the recovery of collateral, the Commission suggested an enhanced high consumer protection level including a modification of the Mortgage Credit Directive ensuring that in the event of an assignment of the credit agreement to a third party, the consumer is entitled to plead against the assignee any defense available to him as against the original creditor. The Commission also agrees with the need to fully implement the Mortgage Credit Directive. The Commission is currently assessing its implementation.

Moreover, the Commission is currently reviewing the Consumer Credit Directive, with the aim to reinforce the protection of borrowers, and has just launched a project aimed at facilitating the delivery of debt-advice services for all European citizens.

The Commission also concurs with the importance of protecting consumers' rights in other areas, including as regards banking fees and transparency of costs, profitability and risks. The Commission is monitoring the implementation of the existing framework and specifically in the field of retail investments has launched an extensive study on these issues.

On concerns in relation to **anti-money laundering and counter terrorist financing (AML/CFT)**:

- The Commission welcomes the Parliament's support of the Communication on the Action Plan outlining proposals to further enhance the European anti-money laundering and counter terrorist financing (AML/CFT) regulatory framework, published on 7 May 2020. Pursuant to the Action Plan, the Commission is committed, by the first quarter of 2021, to put forward appropriate legislative proposals which would include the following elements:
 - Bringing about a single, all-encompassing rulebook. Diverging interpretations of the rules have led to loopholes in our system, which can be exploited by criminals. To combat this, the Commission will propose a more harmonised set of rules, built around a regulation and a recast directive; the new regulatory framework for money laundering will be consistent with our robust rules governing the European financial sector.
 - Establishing an influential Union-level supervisor, endowed with direct supervisory powers towards the riskiest financial sector entities, as well as the capacity to direct, coordinate, and intervene, where necessary, in the activity of national supervisory authorities. The supervisor will also need to be endowed with a sufficiently wide scope of action, covering those sectors subject to the anti-money laundering rules that are prone to cause most substantial damage to the reputation and the integrity of the Union's financial system.
 - Establishing a coordination and support mechanism for Member States' Financial Intelligence Units. There is great scope of action in this field, where coordination will mean that risks are better understood and more quickly acted upon, while financial intelligence is put to effective use in uncovering and punishing criminals.
- The Commission remains committed to ensuring the effective application of EU rules, and in this respect, is taking action to correct shortcomings in transposition of the Union directives, including, where necessary, referral of cases of incomplete transposition to the Court of Justice of the European Union. The Commission further encourages the European Banking Authority (EBA) to make full use of its new powers related to monitoring application of the Union law by the relevant national authorities.

- Furthermore, the Commission will enhance the links to judicial and police cooperation. It will act on the basis of EU instruments and institutional arrangements, empowering the private sector to also play a role in fighting money laundering and terrorist financing. It will aim at enhancing the Union's global presence and footprint within the Financial Action Task Force and on the world stage in shaping international standards in the fight against money laundering and terrorist financing.
- The Commission agrees that the ECB plays a role in combatting money laundering, especially by considering AML/CFT aspects when carrying out the suitability assessment of members of the management body.
- The Commission agrees that the scope of EU legislation should also address the implications of technological innovation and developments in international standards. The Commission will assess the possibility of expanding the scope of entities covered by AML/CFT rules to all virtual assets providers, facilitating the use of digital identification for remote customer onboarding and introducing a ceiling for large cash payments.

One of the objectives of the EU legislation relative to **credit ratings** is to increase competition in that market. The Commission services are monitoring developments in the market in close cooperation with the European Securities and Markets Authority (ESMA), which publishes every year a calculation of the market share of the credit rating agencies registered in the EU.

As regards **the Minimum Requirement for Own Funds and Eligible Liabilities**, the Commission notes the strong emphasis placed on the need to protect retail investors and retail depositors in the context of bail-in and selling of Minimum Requirement for Own Funds and Eligible Liabilities eligible instruments:

- As regards the need to address potential shortcomings in safeguarding **retail deposits**, it shall be noted that they already have been granted a sizeable degree of protection in the EU resolution framework by virtue of their super-preferred ranking in the hierarchy of claims under insolvency law. Any additional enhancements could be considered in the follow-up to the Commission report on implementation of Bank Recovery and Resolution Directive (BRRD) and Single Resolution Mechanism Regulation (SRMR) of April 2019.
- As regards protection of **retail investors**, the Commission agrees with the need to ensure prudent application by relevant authorities of the new rules included in the Banking Package that restrict the selling of Minimum Requirement for Own Funds and Eligible Liabilities eligible instruments to such investors.
- With respect to the **disclosure** by the Single Resolution Board (SRB) on banks' compliance with Minimum Requirement for Own Funds and Eligible Liabilities, it shall be noted that under the Banking Package, public disclosure requirements for banks on their compliance with Minimum Requirement for Own Funds and Eligible Liabilities become applicable only from 2024. This was agreed to enable that banks across the EU are allowed an appropriate period to comply with their Minimum Requirement for Own Funds and Eligible Liabilities in an orderly fashion.

The Commission welcomes the Parliament's commitment to timely and consistently implement the **Basel III** agreement in the EU, taking into account European specificities and the need to preserve the diversity of the EU banking sector. The Commission services have taken several steps over the last two years to prepare for the EU implementation of the final Basel III reforms with a view to putting forward legislative proposals. The Commission is

currently reviewing its impact assessment taking into account the impact of the COVID 19 crisis. In this context, particular consideration is also given to the objective stated by the Parliament for the reforms not to result in a significant increase in the overall capital requirements for the EU banking sector.

The Commission is aware of the differences in the application and setting of the **Other Systemically Important Institutions (O-SII) buffer** among Member States and notes that these differences can be largely explained by differences in the structure of national banking systems. It, however, reckons that further scope for harmonisation could be explored beyond existing provisions as regards systemic risk. For this purpose, the European Banking Authority is mandated, after having consulted the European Systemic Risk Board (ESRB), to report to the Commission on the appropriate methodology for the design and calibration of Other Systemically Important Institutions (O-SII) buffer rates by the end of 2020. The Commission will examine the report and, if appropriate, take the necessary actions.

The Commission recalls that the **non-bank financial sector** in the EU has been subject to an extensive body of regulations, much of which aimed at enhancing financial stability in the wake of the financial crisis. These regulations are regularly reviewed in light of new developments. The Commission will consider to what extent the growing importance of non-bank financial intermediation and the interconnectedness of banks and non-banks requires additional macroprudential tools. For instance, following the European Systemic Risk Board (ESRB) recommendations on liquidity and leverage risks in investment funds some adjustments in the Alternative Investment Funds Managers Directive (AIFMD) may be needed.

The Commission supports further work to explore the need and feasibility of further harmonisation of specific aspects of **bank insolvency laws**. In that respect, the Commission would like to emphasise that the crucial element of a reform is to ensure a consistent and effective overall crisis management framework and the availability of adequate means to manage the failure of very diverse categories of banks.

The Commission supports clarifications on the **early intervention measures** to ensure their swift applicability and promote legal clarity.

The Commission also agrees on the importance of ensuring a consistent application of the **public interest test** in resolution cases within and outside the Banking Union.

The Commission is reflecting, based on sector developments and experience gained in **State aid** cases, on the appropriate timing to evaluate the relevant State aid rules, in particular the 2013 Banking Communication, to ensure they remain relevant in a changing context, whilst taking into account legacy issues dating from the financial crisis. It will conduct an evaluation of its 2013 Banking Communication when the economy has recovered and at the latest in 2023. In that respect, it is important to bear in mind the current economic context and uncertainties caused by the COVID-19 outbreak, which was declared to constitute a serious disturbance in the economy of Member States.

The Commission supports further work to clarify the **least cost principle** in the use of Deposit Guarantee Schemes outside their “payout” function. In that respect, we would like to emphasise that Deposit Guarantee Schemes can be an effective means of financing also in resolution and would support work to ensure consistency in its use within the entire crisis management framework.

On the **common backstop to the Single Resolution Fund**, the Commission supports Member States’ efforts to finalise the last discussions on the matter and conclude the signing of the European Stability Mechanism (ESM) Treaty in the coming months. In addition to

following their commitment from December 2013 in this respect, this would prepare the ground for a political decision on the possible early introduction of the backstop at the end of this year.

On **liquidity in resolution**, the Commission agrees with the need to find solutions to cover the identified gap in the framework and is ready to continue discussions with the other EU institutions and bodies and with Member States to that end.

As regards the need for further **integration of banking markets**, the Commission supports the expressed position that further integration is needed in order to enhance bank profitability and that banks should be able to operate across borders while managing capital and liquidity at a consolidated level. This could be facilitated for example if capital, liquidity and Minimum Requirement for Own Funds and Eligible Liabilities requirements could be substituted with collateralised guarantees provided by the parent to the subsidiary (as was the Commission's proposal in the November 2016 Banking package). Such credible and enforceable mechanisms to transfer capital and liquidity from the parent company to subsidiaries in host Member States in times of financial stress could facilitate the lowering of the prepositioning levels and the consolidated management of capital and liquidity. The Commission also recognises that relevant safeguards need to be put in place to ensure an adequate balance between home and host Member States.

Finally, the completion of the Banking Union including a **European Deposit Insurance Scheme** (EDIS) remains one of the key priorities also for this Commission. In light of the outcome of discussions between Member States in December 2019, the Commission continues to believe that it is essential that an agreement is found on how to move forward with the Banking Union. The Political Guidelines of President von der Leyen for the 2019-2024 European Commission recall the need for a European Deposit Insurance Scheme. The Commission is actively contributing to continued technical discussions in the Council's Ad Hoc Working Party, exploring potential design scenarios for a common depositor protection mechanism, which may help to inform political discussions and identify desirable features of a financial safety net that includes a strong depositor protection component. In parallel, the Commission is consulting European Parliament and Member States' representatives through its own technical expert group on aspects of the Deposit Guarantee Scheme Directive (DGSD) and Bank Recovery and Resolution Directive (BRRD) to help design a complete and consistent framework, taking into account national characteristics and the diversity of national frameworks.