Roberto Gualtieri MEP, Chairman of the Economic and Monetary Affairs Committee
Mr Toomas Tõniste Minister for Finance, Estonia
Vice President Valdis Dombrovskis, European Commission

Dear Chairman Gualtieri
Dear Mr Toomas Tõniste
Dear Vice President Dombrovskis

The undersigned associations represent the majority of the G-SIBs with headquarters outside mainland Europe as designated by the Financial Stability Board (FSB).

Global regulatory coordination has vastly improved since the last financial crisis, with enhanced processes for cross-border resolution of large banking groups and greater interaction, collaboration and information sharing between regulators. Reforms devised at the global standard setting bodies and then implemented at the national or regional level, together with enhanced cooperation and information sharing, have fostered increased supervisory trust and cooperation. This includes the implementation of the FSB's 'Key Attributes of Effective Resolution Regimes for Financial Institutions' and FSB's final total loss-absorbing capacity standards for G-SIBs. These steps have materially enhanced financial stability and substantially reduced the risk of firms failing in a manner that might require taxpayer bailouts.

Intermediate Parent Undertaking (IPU) Requirement

From our standpoint, the European Commission's proposal to require third country financial groups to establish an IPU (per Article 21b of the proposed amendments to CRD) is not required to achieve the stated objectives, including improving resolvability and strengthening supervision for third country financial groups, given existing legislation arrangements for cross-border cooperation. We also believe that a proper impact assessment would reveal that the costs for EU businesses and consumers would also be disproportionate to the limited benefit that such a requirement may provide.

While we do support the stated policy objectives, we believe there is a risk that severe direct and indirect negative consequences might ensue if the proposed IPU requirement were implemented without adequate consideration of its economic and legal impact. If the EU businesses of third country groups suffer increased costs entailed by the IPU requirement, such groups may well decide to exit such businesses, reducing choice for EU consumers of financial services and reducing competition.

Supervisory Cooperation

The development of supervisory colleges for global banks based on FSB principles has also contributed to enhanced supervisory collaboration. In recent times, the need to intensify this cooperation and collaboration between supervisors has been emphasised by official EU institutions (e.g. the EBA's opinion on Brexit related issues dated 12 Oct 2017).

We hold the firm view that instead of implementing ex-ante ring-fencing measures, there should be a stronger focus on using and developing the available forms of cooperation under the BRRD (e.g. the European resolution colleges according to art. 89 BRRD), as well as existing cooperation arrangements with non-EU regulators and develop them further in practice. This would better equate to the task of a more balanced international regulatory system in which there is adequate recognition of foreign banks' comparable home-jurisdiction rules for recovery and resolution. We believe that the ongoing cooperation of supervisors and sharing of information in the crisis management groups should serve as the means to build confidence among host-country supervisors.

Unfortunately, the IPU proposal appears to be based on a view that cross-border cooperation among supervisors cannot be relied upon, especially during a stress period. The proposal also implies that the EU policy makers do not have appropriate bilateral relationships with adequate information sharing, systems, and processes that enable the supervision and resolution planning conducted by the home supervisors, nor the national competent authorities. We therefore encourage supervisors in all jurisdictions to intensify their work for a more coordinated and internationally balanced approach to recovery and resolution of internationally active banks.

Governance Models

All G-SIBs have multiple business lines to which their systems of ownership, management and governance are generally aligned. By requiring all EU entities to be re-parented under a single IPU, the existing governance framework may be undermined as the implications are broader than just the change of ownership within a group, including unduly restricting cross-border banks' capital and liquidity management as well as their resolution strategies.

While the IPU may give impressions that supervisors have a consolidated view of the EU operation, in reality, understanding the business model of each business line becomes more challenging as the supervisor can only assess one piece of the global value chain. In this respect, with or without an IPU requirement, the cross-border coordination is critical to the effective supervision of global banking groups. The IPU cannot replace the importance of home–host supervisory cooperation and should not be viewed as the silver bullet to address the risks that the non-EU G-SIBs may pose to European financial stability.

We strongly hope that policymakers carefully review the proposal, not only from a domestic financial stability perspective, but also from a global policy perspective because it is undoubtedly a measure that further fragments the international regulatory framework.

Resolution planning

The EC states that the IPU requirement would strengthen the resolution planning of non-EU G-SIBs by allowing regional resolution planning (although this is already possible through the European Resolution College), and the prepositioning of loss absorbing capacity in the form of internal total loss-absorbing capacity (TLAC). We would like to reiterate that a "key objective of the TLAC standard is to provide home and host authorities with confidence that G-SIBs can be resolved in an orderly manner without putting public funds at risk. This should diminish any incentives on the part of host authorities to ring-fence assets domestically, either ex ante or ex post in a resolution, and thereby avoid the adverse consequences of such actions, including global fragmentation of the financial system, and disorderly resolutions of failed cross-border firms."[1]

Most G-SIBs' resolution strategies are based on the single point of entry (SPE) approach, namely, losses at operating subsidiaries will be passed on to the ultimate parent, and the losses will then be absorbed by bailing in loss absorbency instruments issued by the parent. However, it appears that the EU is implementing a "regional SPE" approach with the IPU proposal, moving away from the Key Attributes agreed at the FSB. While not proved yet, this approach may look effective and justifiable in the context of regional financial stability, but will give less flexibility to address the next global financial crisis.

Further, while the "regional" resolution planning may appear straightforward and frictionless to prepare (rather than coordinating with home supervisors), the plan would likely be unrealistic.

As discussed above, the businesses of G-SIBs are global in nature, and any effort to separately resolve the EU part of the global value chain is impractical – successful resolution (and even recovery) actions, including the sale of a business line, can only be achieved by maintaining the self-sufficient business model.

[1] http://www.fsb.org/wp-content/uploads/P060717-1.pdf

Lastly, not all non-EU G-SIB's EU operations are subject to internal TLAC due to the relative size of the EU sub-group, therefore close coordination with the home supervisor is unavoidable in the context of resolution planning with or without an IPU.

Assessment of existing powers

We encourage the careful assessment of whether the proposed IPU is the only solution to achieve the stated objectives. At a minimum, we propose that other options are considered and the cost and impact are compared, including direct and indirect consequences.

It should be noted that the CRR (Article 127, 3) and the BRRD (Article 17, 5. (h)) already provide the discretionary power to the competent supervisor and resolution authority, respectively, to require the establishment of an IPU by non-EU banking groups. Given financial stability risks can be caused by a number of factors which will differ across firms, depending on their business model, risk portfolio, governance structure, and/or size, it is appropriate that the existing powers enable supervisors to use their discretion to judge, on a case-by-case basis whether or not this power would be appropriate to be used and for which firms. Hard-wiring an IPU requirement into law and thus removing supervisory discretion would be counterproductive and undermines confidence in the ability of EU resolution authorities to ensure third country groups are properly supervised.

We would suggest that authorities be allowed to continue to use these existing discretionary tools in a measured and proportionate way to address any risks that non-EU G-SIBs may pose, as opposed to arbitrarily applying the IPU requirement as a one-size-fits-all provision to all non-EU G-SIBs.

Alternatives

If, following an assessment as recommended above, the co-legislators would still deem it necessary to introduce the IPU requirement into the CRD, then we would suggest the following practical adjustments to render the provision workable for the major third country banks:

1. **Scope:** It is not necessary, nor would it be proportionate, to require all non-EU G-SIBs to comply with an IPU requirement, regardless of the size and scope of their EU activities. The profile, size and complexity of operations within the EU vary across the G-SIBs. The principle of proportionality should be applied even to non-EU G-SIBs, and therefore GSIBs should only be covered by the IPU requirement if they otherwise meet the thresholds set forth for other banks.

2. **Extended implementation period**: A four-year implementation period starting from the date of application of the CRD (i.e. IPU to be established in 2024 if the CRD become effective from 2020) would provide the time necessary for banks to re-engineer their legal entity structures. An extended timeline is particularly necessary given the existing complications presented by a potential Brexit transition period and the ongoing contingency planning. In addition, given the continued uncertainty, the CRD should include a provision allowing competent authorities to extend the period beyond four years if circumstances warrant.

3. **Flexibility to allow structures appropriate for each group**: Taking into consideration the business line-based corporate structure and governance of non-EU G-SIBs, competent authorities should have the discretion to permit multiple IPUs, or alternative structures, where the existence of such a structure would not constitute a barrier to the effective supervision or resolution of the banking group. Factors to take into account when considering such flexibility may include home country legal or regulatory requirements, including structural separation requirements, but these should not constitute a prerequisite for opting to set up multiple IPUs.

4. **Thresholds for application**: When assessing the threshold for the IPU requirement, only the assets of EU subsidiaries of non-EU banks should be taken into account and the assets of the EU branches of non-EU banks should be excluded.

5. **Type of entities within scope**: Calls for forcing non-EU banks to convert their EU branches into local branches of EU credit institution subsidiaries (rather than remain as branches of the non-EU bank) should be rejected. Forcing such conversion, or 'subsidiarisation,' of these branches would fragment liquidity, significantly drive up regional capital and TLAC requirements, and risk establishing a precedent for other

jurisdictions to follow. It also goes against the EU's commitment to free capital markets and free cross-border capital flows in order to provide consumers and businesses with a diverse product offering. To avoid any perceived arbitrage, some enhanced cooperation and/or reporting mechanisms between supervisors should be considered and implemented.

6. **Additional capital**: it should be clarified that the establishment of an IPU should not result in any additional capital and/or internal MREL requirements on a stand-alone basis where the IPU is a non-operating intermediate holding company.

Closing Remarks

We are pleased that non-EU G-SIBs are contributing to the economic growth in Europe by facilitating the provision of financial services to EU businesses and consumers. We hope the EU will continue to lead as a champion of fair and free markets in financial services.

Yours sincerely,

Stephen Jones CEO UK Finance	Claude-Alain Margelisch CEO Swiss Banking	Andreas Barfuss Head of Financial Market Law Swiss Banking	Shin TAKAGI Vice Chairman and Senior Executive Director Japanese Bankers Association