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Mr Jeroen DIJSSELBLOEM  
Minister of Finance  
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*Dear Jeroen,*

We have spoken before about the Dutch legislative initiative establishing credit unions and the request for an implementing act to exempt the Dutch credit unions from the CRD which was submitted on 29 July. I have taken note of the legislation the Netherlands has recently adopted, putting in place a dedicated national regulatory and supervisory framework for credit unions whose members are exclusively entrepreneurs and that these credit unions do not engage in cross-border activities, only take funds from their members and exclusively provide credit to their members.

I also understand that the Dutch authorities do not intend to apply the EU banking legislation, the Capital Requirements Directive (CRD) and Regulation (CRR), to these entities. As you rightly point out, some other Member States have similar institutions (e.g. Ireland, UK and Lithuania), that are exempted from the CRD - and as a consequence also from the CRR - by virtue of Article 2 of the CRD, and I understand you would like Dutch credit unions to be exempted as well.


We appreciate that this is an important issue of equal treatment between Member States. You may have seen that in the Capital Market Union Action Plan we have proposed to ensure a level playing field, to make it possible for all Member States to be able to benefit from credit unions, which are subject to national regulatory safeguards commensurate with the risks that they incur. To the end we will explore the possibility for all Member States to authorise credit unions which operate outside the EU's capital requirements framework for banks.

Legally, however, I have been advised that it is not possible to add new entities to the list of exempted institutions in Article 2 of the CRD without amending the CRD. It is true that Article 146(a) of the CRD foresees that "technical adjustments" to Article 2 can take the form of a Commission implementing act. However, it follows very clearly from recent case law that "*in exercising its implementing powers, the Commission may neither amend, nor supplement the legislative act*". So it seems to us that the forthcoming revision of the CRD would be the right occasion to clarify this matter legally.

In the meanwhile, we take note of the fact that the new Dutch legislation will enter into force and that credit unions with local activities in the Netherlands may be established before we have brought full legal clarity on this issue by means of a revision of the CRD.

I am sorry I cannot give you a more definitive answer in the short term, because of the technical legal difficulties involved. But I hope it is clear that the Commission supports the establishment of more credit unions, subject to appropriate supervision and regulation. I do not believe that these difficulties should prevent you from establishing a regime for Dutch credit unions, because it is our clear intention to make a proposal to modify the legal position at the earliest opportunity.

With best wishes,

  
JONATHAN HILL