

# Structural measures improving the resilience of EU credit institutions

2014/0020(COD) - 19/11/2014 - European Central Bank: opinion, guideline, report

## **Opinion of the European Central Bank (ECB) on a proposal for a regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions.**

The European Central Bank received a request from the European Parliament for an opinion on this proposal. Whilst welcoming the proposal, the ECB made a series of comments on the following issues:

### **Scope of application of the proposed rules:**

The ECB stressed that in the case of a concentration of credit institutions (for example, a merger) which would immediately create a single credit institution falling within the scope of the proposed regulation, the combined figures for the credit institutions which formed the single entity, during the period of two years prior to the concentration, should be considered when the competent authority assesses whether the thresholds for the new single entity are met.

Apart from such cases, national competent authorities should review on a regular basis, and in any case at least annually, whether the threshold criteria are met.

Moreover, the Commission should assess the appropriateness of the threshold criteria in its review of the proposed regulation, e.g. to verify whether all relevant credit institutions are covered.

### **Prohibited trading activities, in particular proprietary trading:**

The ECB generally supported that the proposed regulation prohibits proprietary trading by certain credit institutions. It also welcomed that the proposed regulation prohibits relevant credit institutions from owning or investing in hedge funds.

The ECB generally supported the definition of proprietary trading as put forward in the proposed regulation but suggested some amendments that aim to clarify the prohibited activities. In particular, the ECB suggested clarifying that there will be a prohibition on transactions relating to proprietary trading that are undertaken in reaction to and in order to exploit market valuations and with the aim of making profit, irrespective of whether a profit is in fact realised either in the short or in the longer term.

The ECB stressed that some carve-outs are implied by the Commission proposal which seem to indicate that the nature of the exempted trading activities should be further assessed in the upcoming review of the proposed regulation in order to determine the extent of the possible threat that they may pose to individual credit institutions or the global financial system.

### **Decision on whether or not to request separation of trading activities, in particular the treatment of market-making activities:**

Although supporting the proposed regulation's approach to separation, the ECB considered it would be useful to supplement these helpful provisions by introducing more clarity to the assessment of whether a core credit institution's trading activities pose a threat to financial stability and thus require separation.

As regards increasing transparency, the ECB considered that the supervisory decision needs to be made by reference to a set of criteria broader than that contained in the proposed regulation. To this end, the metrics could usefully be complemented by additional qualitative information such as: (a) a cartography of trading activities, including methods for assessing the need to build up inventories in order to meet anticipated client demand; (b) the compliance framework implementing the proposed regulation; and (c) the compensation schemes for traders.

The metrics could be complemented by additional quantitative data such as inventory turnover, value-at-risk variations, 'day 1 profit and loss', limits on trading desks and geographic diversification of the trading activities.

The ECB considered it important to sufficiently preserve the market-making activities of banks in order to maintain or increase asset and market liquidity, moderate price volatility and increase security markets' resilience to shocks. This is essential for financial stability, the implementation and smooth transmission of monetary policy, and the financing of the economy. Therefore, any regulatory treatment should avoid negative consequences for market-making activities that are not justified by significant risks. With this in mind, the ECB suggested a more accurate definition of market making.

Lastly, the ECB noted that it should be noted that separation does not in itself solve the too-big-to-fail issue.

#### **Derogation clause:**

The proposed regulation provides that the Commission, at the request of a Member State, can authorise a derogation from the separation requirements for credit institutions that are covered by national legislation having an 'equivalent effect' to the provisions of the proposed regulation. The ECB stated that the derogation is not compatible with the aim of creating a level playing field and may create a precedent for future derogations in other types of Union legislation.

#### **Cooperation between the competent authority and the resolution authority:**

Enhancing the resolvability of banks while preserving critical financial services in the economy as a whole is also a key aim of the supervisory process to which the measures in the proposed regulation should seek to give effect. Therefore, competent authorities and resolution authorities will have to work in close cooperation in both of these processes.

#### **Sanctioning powers:**

As the ECB is considered a competent authority for the exclusive purpose of carrying out the tasks conferred on it, the ECB should also have the power to exercise appropriate sanctioning powers.

It suggested aligning the level of pecuniary sanctions in the proposed regulation with Directive 2013/36/EU of the European Parliament and of the Council. Lastly, as regards the power to suspend an authorisation, the ECB suggested removing this sanction from the proposed regulation in order to avoid legal difficulties.