Prudential requirements for credit institutions and investment firms. Capital Requirements Regulation (CRR)

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and a proposal for a Regulation on prudential requirements for credit institutions and investment firm.

For reasons of efficiency and clarity, the ECB has decided to issue a single opinion on these two legislative proposals.

General observations: the ECB welcomes the Union's strong commitment to implement international standards and agreements in the field of financial regulation, while taking into consideration, where relevant, specific features of the Union's legal and financial system. Furthermore, the ECB strongly supports the timely and effective implementation of the Basel capital and liquidity standards.

Reform of Union banking legislation: the ECB welcomes the innovative approach taken by the Commission, in particular with regard to the proposed regulation, which incorporates most of the technical Annexes to Directives 2006/48/EC and 2006/49/EC and limits Member State options and discretion. As regards future reviews of the proposed regulation and as pointed out in previous opinions, the ECB recommends ensuring that only framework principles contained in the proposed regulation reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure. Technical rules, including those in the proposed regulation, should be adopted as delegated or implementing acts in accordance with Articles 290 and 291 of the Treaty, which will thereby emerge as the main body of rules applying to Union financial institutions.

Single European rulebook in the financial sector: the ECB strongly supports the development of a single European rulebook for all financial institutions as it promotes the smooth functioning of the single market within the Union and facilitates greater financial integration in Europe. Furthermore, harmonised rules improve transparency and reduce regulatory and compliance costs.

ECB's advisory role regarding draft delegated and implementing acts: against the backdrop of Court of Justice rulings, and in order to deploy the full benefits of the exercise by the ECB of its advisory role, the ECB should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence. The ECB will exercise its advisory role on matters within the ECB's competence taking into utmost account the timelines for adoption of these acts and the need to ensure the smooth adoption of implementing legislation.

Specific observations

1) Macro-prudential supervision and scope for stricter rules: the ECB strongly supports the Commission' s approach, which effectively establishes a single European rulebook for financial institutions. It fully supports the aim of addressing targeted risk exposures concerning, inter alia, certain sectors, regions or Member States through delegated acts.

- Nonetheless, the delegated acts the Commission can adopt should extend to prudential requirements on large exposures and disclosure requirements as well as to leverage and liquidity requirements, once

leverage and liquidity requirements effectively become part of the applicable Union regulatory framework. The ECB notes, however, that a timeframe of six months or less for the imposition of stricter requirements to address such risks will be insufficient in many cases and would require a much longer timeframe, e.g. two years or more, to be effective and to achieve the desired objective.

- The ECB considers it important that the proposed regulation makes it possible for Member States to apply more stringent prudential requirements where systemic risks to financial stability arise. The scope of the proposed framework could be extended to cover stricter requirements for: (a) capital; (b) limits on large exposures; (c) liquidity requirements and leverage ratio, once introduced into the Union regulatory framework.

- With a view to maintaining transparency and ensuring the consistency of measures adopted within the Union, the ECB recommends that the possible application of more stringent requirements by national authorities be subject to safeguards. In this regard, the ESRB could play an important coordinating role. Moreover, the EBA and the ESRB should publish regular updates on their respective websites of measures adopted by Member States that are more stringent than those in the proposed regulation.

2) Own funds: the ECB strongly supports the proposed strengthening of the eligibility criteria for regulatory own funds as well as the further harmonisation of deductions.

- In line with the Basel III agreement, the 'capital instruments' referred to in the proposed regulation should consist solely of shares in companies as defined under the respective national laws in the Member States (with the exception of capital instruments issued by mutuals, cooperative societies and similar institutions) and should qualify as common equity tier 1 items only if they meet all the conditions defined in the proposed regulation.

The ECB also recommends that the Commission, through the adoption of an implementing act, endorse the list of forms of the shares eligible as common equity tier 1 capital established by the EBA in order to give the list a binding effect.

- As regards significant investments in insurance undertakings, reinsurance undertakings and insurance holding companies, the Basel III agreement requires that, over a certain threshold, these investments be deducted from common equity tier 1 capital, i.e. the corresponding deduction approach.

The proposed regulation maintains the possibility, already present in Directive 2006/48/EC, for competent authorities to authorise the application of the methods set out in Directive 2002/87/EC as an alternative to 'deduction'.

The ECB supports addressing the issue of double use of regulatory own funds both at the banking group level, i.e. consolidation of all subsidiaries that are institutions and financial institutions, and at the financial conglomerate level. In this context, application of the methods set out in Annex I to Directive 2002/87/EC should not at any time result in higher regulatory own funds for groups of institutions and financial institutions as referred to in the proposed regulation vis-à-vis what would be the regulatory own funds if the deduction approach applied.

Taking into account the Basel III agreement and also, as appropriate, the international principles of the Joint Forum on Financial Conglomerates, the ECB recommends ensuring full cross-sectoral consistency among these texts, which requires aligning the proposed regulation with the corresponding provisions of Directives 2009/138/EC and 2002/87/EC.

3) Capital buffers: the ECB welcomes the choice of the proposed directive for the introduction of the framework for capital buffers. In this regard, the ECB emphasises that a decision with regard to a counter-cyclical capital buffer by national authorities should be subject to unconstrained reciprocity requirements up to 2.5 % of risk- weighted assets, while voluntary reciprocity should apply above this threshold.

In addition, the ECB supports the proposal that national authorities have the ability to set a counter-cyclical capital buffer that takes into account any financial and economic variables considered relevant for the assessment of excessive credit growth and the build-up of systemic risks. However, these variables should not be structural in nature as the counter-cyclical capital buffer should not aim at addressing structural risks in the financial system.

4) Liquidity: the ECB welcomes the Commission's unequivocal commitment to introduce into Union legislation both a liquidity coverage requirement (LCR) and a net stable funding ratio (NSFR), in line with the Basel III agreements.

With regard to the proposed liquidity framework, the ECB would like to highlight the following points:

- regarding reporting on liquid assets, the ECB recommends the adoption of a single and transparent list of the items to be reported. As regards the treatment of shares or units in collective investment undertakings (CIUs) as liquid assets, it is important to limit the relative amount of these instruments in the total LCR, in addition to setting an absolute amount threshold of EUR 250 million, in order to limit concentration risks in small institutions;

- central banks should be involved in determining the extent to which central bank reserves may count towards the stock of liquid assets in times of stress;

- the ECB recommends being consulted by the EBA when developing a uniform definition of high quality assets as well as on the assessment by 31 December 2015 on how to ensure that institutions use stable sources of funding;

- the EBA, in cooperation with the ESRB, should be involved in formulating guidance on the possible release and subsequent build-up of the liquidity buffer in times of stress;

- the introduction of the NSFR will ensure that credit institutions have stable funding to meet their obligations. The ECB suggests drafting changes to avoid any possible ambiguity in the implementation of this requirement.

5) Leverage: the ECB welcomes the Commission's commitment to introduce a non- risk based leverage ratio as a binding requirement, subject to appropriate review and calibration by making maximum use of the agreed review period. Against this background, the ECB suggests clarifying in the proposed regulation the legislator's commitment to introducing this requirement.

6) Supervisory reporting: the supervisory reporting frameworks of financial reporting (FINREP) and common reporting (COREP) have been last developed by the Committee of European Banking Supervisors. These frameworks are currently based on non-binding guidelines and reporting templates. In this context, the ECB recommends: (a) clarifying in the proposed regulation the COREP reporting framework; (b) introducing a clear legal basis for FINREP; and (c) further specifying the scope of the draft technical standards to be developed by the EBA in this field. In particular, it is proposed that EBA and ESRB should cooperate to define the scope of financial information necessary for the purposes of macro- prudential oversight.

7) Enhancement of information-sharing arrangements: the ECB suggests reflecting the changes introduced by the supervisory reform in the proposed directive and further improving the exchange of information between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks

The ECB would also recommend that the Commission, with the assistance of the relevant institutions and authorities (including the ECB, the ESRB and the EBA) undertake, within two years following the entry into force of the proposed directive, a full review of the effectiveness of these arrangements and, where appropriate, formulate proposals to further enhance this framework at Union level.

Lastly, the ECB recommends an in-depth assessment by the Commission, based on a report of the EBA, of the application of the proposed directive and regulation with regard to Union and Member State cooperation with third countries.