

Capital Requirements Directive: exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

2016/0364(COD) - 08/11/2017

OPINION of the European Central Bank (ECB) on amendments to the Union framework for capital requirements of credit institutions and investment firms

The ECB **supports the Commission's banking reform package**, which will implement important elements of the global regulatory reform agenda in Union legislation. The Commission's proposal is expected to substantially strengthen the regulatory architecture, thereby contributing to the reduction of risks in the banking sector.

The ECB addresses issues of particular importance to the ECB, which have been divided into two sections: (1) **changes to the existing Union regulatory and supervisory framework**; and (2) **implementation of internationally agreed supervisory standards**.

The amendments which it proposes to the implementation of the Pillar 2 requirements of the Basel III framework in the Capital Requirements Directive (CRD) seek to achieve greater supervisory convergence in the Union

The ECB makes, inter alia, the following observations:

- the proposal to develop **regulatory technical standards on additional own funds requirements** is not the appropriate tool for achieving the objective of supervisory convergence. The ECB supports a risk-based approach that takes into account the diversity of risk profiles of institutions;
- **supervisory authorities** should retain the power to set a composition requirement for additional own funds and to require that additional own funds requirements must be met solely with Common Equity Tier 1 capital;
- the proposed amendments to the CRD should **reflect more clearly the need for flexibility** in the determination of Pillar 2 guidance. In addition, it should be clarified that, where a stress test identifies additional types of credit risk in a hypothetical situation and these are part of the Pillar 2 requirements, competent authorities retain the ability to apply measures addressing such risks in the Pillar 2 guidance;
- the proposed amendments limiting the power of competent authorities to require credit institutions to provide additional or more frequent information should be deleted;
- competent authorities should be **allowed to impose own funds requirements** whenever interest rate risk is a material source of concern and not only when risks exceed a certain predefined threshold;
- the proposal for formal consultation of resolution authorities prior to determining additional own fund requirements or providing guidance as specified in the CRD would prove unnecessarily burdensome and unduly formalistic in practice.

The ECB is generally supportive with regard to removing Pillar 2 as an instrument from the macroprudential toolkit, but reiterates its view that removing Pillar 2 requirements should not result in authorities having insufficient tools to carry out their mandate and achieve their policy objectives.

Pending an in-depth review of the macroprudential framework, the ECB suggests **a number of adjustments to improve the operational efficiency of the current macroprudential framework**, such as withdrawing the present hierarchy for the sequencing of the activation mechanism, and streamlining the wide variety of notification and activation procedures for macroprudential measures.

The ECB welcomes the requirement to establish intermediate **EU parent undertakings** for third-country banking groups with two or more institutions established in the Union, provided that certain criteria are met or thresholds are exceeded. However, certain aspects of the proposed amendments to the CRD require further clarification in order to avoid regulatory arbitrage.

With respect to **proportionality in reporting**, the ECB suggests that, instead of reducing the frequency of regulatory reporting, the scope of reporting for smaller institutions could be amended.

The **consolidated and solo supervision of large cross-border, bank-like investment firms** in the Union warrants further consideration, to ensure prudent and consistent supervisory standards commensurate with the risks these firms can pose. One of the possible options would be to amend the CRD/CRR in order to ensure that large cross-border investment firms are considered as credit institutions.

The ECB recommends that Union law should be amended to **include a definition of key function holders and to clarify the definition of senior management**. Moreover, in order to harmonise national approaches, a provision should be introduced on the powers of competent authorities when assessing key function holders in significant institutions.

Lastly, the ECB proposes to expand the list of infringements subject to sanctions.