

Prudential supervision of investment firms

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Opinion of the European Central Bank of 22 August 2018 on the review of prudential treatment of investment firms.

The ECB supports the objective of the proposed regulation and the [proposed directive](#) in setting out a prudential framework that is better adapted to the risks and business models of different types of investment firms.

Whilst the ECB generally supports the purpose of subjecting systemically important investment firms to the same prudential rules as credit institutions, the proposed acts should be carefully assessed in order to avoid unintended consequences for other Union legal acts due to the change in the definition of credit institutions.

In particular, the ECB wishes to assess the possible consequences of including Class 1 companies (those whose business consists of own account dealing, underwriting of financial instruments, or placing of financial instruments on a firm commitment basis and whose total assets exceed EUR 30 billion) in the definition of 'credit institution'.

Classification of investment firms as credit institutions

Under the proposed regulation the criteria according to which an investment firm is to be considered a credit institution within the meaning of Regulation (EU) No 575/2013 (Regulation on prudential requirements for credit institutions and investment firms, Capital Requirement Regulation – CRR) aim to capture systemic investment firms with total assets above certain thresholds.

The ECB welcomes this proposal given that firms which meet these criteria can pose increased financial stability risks. It considers that the proposed regulation should provide clarification as to how the assets are to be calculated, i.e. including the assets of Union branches of third country groups and third country subsidiaries of undertakings in the Union arising from their consolidated balance sheet.

It also suggests that the total asset threshold could be complemented with other criteria including for example a revenue criterion, significance of cross-jurisdictional activity or interconnectedness.

Statistical implications

The ECB notes the importance of ensuring a high degree of consistency and harmonised methodologies for statistical concepts and definitions in Union legislation and between Union statistical legislation and international statistical standards, in particular the System of National Accounts adopted by the United Nations Statistical Commission.

If Class 1 firms are classified as credit institutions, there would be inconsistencies in the common standards, definitions and classifications of relevance for the statistical treatment of financial corporations set out in Union legislation that would need to be remedied.

Macro-prudential perspective on investment firms

The proposed acts do not take on board the EBA recommendations on the need for a macro-prudential perspective on investment firms. A possible future review of the criteria for determining systemic

investment firms may also consider whether certain macro-prudential tools could be developed to address specific risks that smaller investment firms could pose to financial stability.

Provision of services by third-country firms

Regarding the Commission's proposal to strengthen and further harmonise the Union legislation applicable to branches of third country investment firms, the ECB considers that the Union legislator might wish to give further consideration to the possibility of applying the harmonised rules to all branches, even those that provide services to professional clients and eligible counterparties, in order to ensure that material risks are addressed consistently across the Union and to avoid regulatory arbitrage.

The proposed regulation strengthens the regime outlined in Regulation (EU) No 600/2014 with regard to the provision of services and performance of activities by third country investment firms after an equivalence decision has been taken. The equivalence of third-country regulatory regimes is used in different areas of relevant Union law and consistency and additional enhancements to those approaches could be further considered.

Furthermore, in order to ensure a level playing field, the ECB suggests ensuring that such non-equivalent third-country firms are required over time to establish a branch (or a subsidiary) in the Union in order to provide any investment services in the Union.

Alignment

The ECB recommends that the interplay between the proposed acts and Directive 2013/36/EU and Regulation (EU) No 575/2013 should be carefully assessed in order to avoid unintended consequences due to the change in the definition of credit institutions. The proposals should, for example, aim to align the wording in the different sectoral acts of Union law so as to harmonise, where appropriate, the scope of professional secrecy obligations.