

Prudential requirements 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.

Directive 2013/36/EU (Directive on own funds, Capital Requirements Directive IV, CRD IV) requires Member States to ensure that the competent authority for the authorisation of credit institutions consults the competent authorities for the supervision of investment firms if the relevant investment firm is controlled by the same natural or legal persons as those who control the credit institution. The ECB considers that the proposed directive should, therefore, clarify that such a consultation is also required where an investment firm is reclassified as a credit institution.

Authorisation of certain investment firms as credit institutions

Under the proposed directive responsibility for the authorisation of an investment firm that falls within the definition of a credit institution is assigned to the competent authority for the authorisation of credit institutions under Directive 2013/36/EU.

Whilst the proposed directive stipulates that those investment firms that can be classified as credit institutions must obtain authorisation as a credit institution, the ECB is of the view that clarification is needed as to what happens once authorisation as a credit institution is granted

The proposed directive should also:

- clarify the consequences for an investment firm which has reached the threshold but operates without the relevant authorisation for an extended period of time and whose application for authorisation is subsequently rejected by the competent authority;
- specify that investment firms that fulfil the definition of credit institutions, irrespective of which part of the definition their activities fall under, are only permitted to perform the traditional banking activities (for example, receiving deposits from the public or granting loans).

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.

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.