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From:	Ms Christine LAGARDE, President of the European Central Bank
date of receipt:	13 January 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Central Bank of 13 January 2022 on a proposal to amend Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms with respect to resolution

Delegations will find attached the opinion mentioned above, and its technical working document.

Encl.

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 January 2022

on a proposal to amend Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms with respect to resolution

(CON/2022/3)

Introduction and legal basis

On 29 November 2021 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities[1] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the ECB's tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty and the contribution by the European System of Central Banks to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The ECB acknowledges that the proposed regulation consists of technical adjustments with the aim of operationalising substantive legislative decisions implemented by the latest amendments to Directive 2014/59/EU of the European Parliament and of the Council[2] (hereinafter the 'BRRD'), assessed in the ECB's opinion on revisions to the Union crisis management framework[3].

The ECB supports the proposed regulation, which ensures better alignment between the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council[4] (hereinafter the 'Capital

1 COM(2021) 665 final.

2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

3 Opinion of the European Central Bank of 8 November 2017 on revisions to the Union crisis management framework (CON/2017/47) (OJ C 314, 31.1.2018, p. 17).

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

Requirements Regulation' or 'CRR') and the provisions of the BRRD, following the entry into force of the revised framework on Total Loss-Absorbing Capacity (TLAC) and the minimum requirement for own funds and eligible liabilities. The ECB further supports the proposed regulation inasmuch as it ensures better alignment of the regulatory treatment of global systemically important institutions (G-SIIs) with a multiple point of entry (MPE) resolution strategy, including groups with subsidiaries registered in third countries, with the treatment outlined in the TLAC standard.

Going forward, the ECB invites the Union legislative bodies to monitor and assess the implementation of these amendments to the CRR in the light of the abovementioned objectives, more specifically to assess the interplay between the BRRD and the CRR as well as to avoid global systemically important banks and G-SIIs engaging in regulatory arbitrage between single point of entry and MPE resolution strategies based on the minimum requirement for own funds and eligible liabilities or TLAC target level.

Some minor technical adjustments are proposed, with the purpose of clarifying the interpretation of the legal text or to ensure consistency of terminology used in the regulation. To this end, a specific drafting proposal is set out in a separate technical working document accompanied by an explanatory text. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 13 January 2022



The President of the ECB

Christine LAGARDE

Technical working document

produced in connection with ECB Opinion [CON/2022/3][1] on a proposal to amend Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms with respect to resolution

Drafting proposals

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 1 Recital (5)	
'(5) … Furthermore, that approach should be applicable to all third-country subsidiaries belonging to that G-SII, as long as those subsidiaries are subject to a local resolution regime that is equivalent to internationally agreed standards.'	'(5) … Furthermore, that approach should be applicable to all third-country subsidiaries belonging to that G-SII, as long as those subsidiaries are subject to a local resolution regime that is equivalent to internationally agreed standards, **more specifically the standard set out in the Financial Stability Board's 'Key Attributes of Effective Resolution Regimes for Financial Institutions' and the TLAC standard.**'
Explanation *It is deemed important to include an explicit reference to the FSB' Key Attributes of Effective Resolution Regimes for Financial institutions and to TLAC standards which are the relevant international standards applicable to resolution regimes.*	
Amendment 2 Point (5)(a) of Article 1 of the proposed regulation (Article 72e(4) of the CRR)	
'4. … That adjusted amount shall be at least equal to the amount (m) calculated as follows:'	'4. …That ~~adjusted~~ **deducted** amount shall be at least equal to the amount (m) calculated as follows:'
Explanation *As currently drafted, the text might be interpreted as meaning that the formula refers to the adjustment to*	

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
the deduction (i.e. a part of the deducted amount), and not to the deducted amount itself.	
Amendment 3 Point (5)(a) of Article 1 of the proposed regulation (Article 72e(4) of the CRR)	
'4. … mi = max{0; OPi + LPi – max{0; β · [Oi + Li – max{ri · aRWAi; wi ·aLREi}]}}'	'4. … mi = max{0; OPi + LPi – max{0; β · [Oi + Li – max{ri · ~~aRWAi~~ **aTREAi**; wi ·~~aLREi~~ **aTEMi** }]}}'
Explanation *As a matter of consistency, a slight modification to the nomenclature of the formula is proposed, namely to replace 'aRWA' with 'aTREA' and 'aLRE' with 'aTEM', which would be in line with the explanation of these components given in the proposed regulation itself:* *'aRWAi = the total risk exposure amount of the G-SII entity i calculated in accordance with Article 92(3), taking into account the adjustments set out in Article 12a;' and* *'aLREi = the total exposure measure of the G-SII entity i calculated in accordance with Article 429(4)'.*	