

Template for comments

Public consultation on the draft addendum to the ECB guidance to banks on non-performing loans

Please enter all your feedback in this list.

When entering feedback, please make sure that:
 each comment deals with a single issue only;
 you indicate the relevant article/chapter/paragraph, where appropriate;
 you indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: 8 December 2017

ID	Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	2 - General Concept	2	3	Clarification	<p>Redundancy with existing Pillar 2 framework</p> <p>Within current Single Supervisory Mechanism (SSM) the ECB has legitimacy to require micro-prudential measures to a specific bank whereas the proposed addendum provides for systematic and standardized measures for all credit institutions.</p> <p>The proposed prudential provisioning backstops are not relevant since all EU credit institutions are not equally concerned by NPL issue. French credit institutions are actively managing the level and the "quality" of their NPL portfolio. EBA describes EBA in its Quarterly report (June 2017) the improvement in France between September 2016 and June 2017, from 3.9% to 3.4% (141 Bn€) with a 50.8% level of provisioning, above the average level within the EU. It seems not fair to impose to all credit institutions additional prudential constraints, when the SSM already allows supervisors for micro-prudential specific measures.</p> <p>We share both Council's and EP's view on the fact that the legislator has conferred supervisory tasks on the ECB on the basis of this Treaty provision, that the ECB shall apply « all relevant Union law » (i.e. CRR and CRD rules as well as EBA guidelines) while exercising these tasks, and that the ECB cannot adopt instruments of soft law intended to ensure systematic compliance by all banks of criteria for minimum provisioning which have not yet been harmonised by the EU legislator and for which application banks themselves are granted a margin of discretion under current EU legislation.</p>	Redundancy with existing Pillar 2 framework	[REDACTED]	Publish
2	2 - General Concept	2	3	Clarification	<p>Risk of stigmatizing the entire EU banking system</p> <p>A "one size fits a fit" prudential approach on NPLs seems not appropriate, since it would stigmatize all the European credit institutions instead of targeting those who need dedicated Pillar 2 approaches. The proposed measure is contradictory with a required application of the proportionality principle and carries a risk of image for the whole EU banking sector.</p> <p>At least, the proposal should include proportionality triggers based on actual NPL rates.</p>	Risk of stigmatizing the entire EU banking system	[REDACTED]	Publish
3	2 - General Concept	2	3	Clarification	<p>The proposal would deny the value of the new IFRS 9 accounting regime and raise taxation issues</p> <p>The proposal leads to disconnect accounting rules and prudential rules by introducing an additional capital charge to the IFRS 9 provisioning level. It may be seen as considering that the new IFRS 9 standard is not prudent enough, and so as discrediting new IFRS 9 accounting provisions. Moreover, creating a prudential and accounting mismatch could have potential fiscal effects questioning the principle of transparency and leading to a lack of homogeneity among credit institutions. Prudential provisioning backstops may lead to an increase in accounting impairment and consequently to tax base reductions that could be seen by taxation authorities as not reflecting the economic reality.</p>	The proposal would deny the value of the new IFRS 9 accounting regime and raise taxation issues	[REDACTED]	Publish
4	2 - General Concept	2	3	Clarification	<p>There seems to be contradictions with current modelling rules and practices.</p> <p>The overlap with RWA for defaulted assets should be clarified. In case of 100% prudential backstop, it should be clarified whether RWA for defaulted loans would any longer be needed. Besides, introducing prudential backstops means de facto the derecognition of the Best Estimate of Expected Losses models built by the institutions using advanced internal models.</p>	There seems to be contradictions with current modelling rules and practices	[REDACTED]	Publish
5	2 - General Concept	2	3	Clarification	<p>Inconsistency with national legal procedures timeframes</p> <p>A standardized period of 2 years for 100% prudential provisioning for unsecured exposures seems arbitrary and too short. It does not reflect legal procedure timeframe that can be delayed for reasons beyond the institutions' control. In France, the debtor has the legal means to contest every aspect of a given credit (actual rate of the credit, credit's inadequacy, perimeter of the insurance, etc.), which has the effect of suspending the legal procedure.</p>	Inconsistency with national legal procedures timeframes	[REDACTED]	Publish
6	2 - General Concept	2	3	Clarification	<p>The measure could be detrimental to consumer protection and create an inefficient NPL secondary market</p> <p>Non-regulated shadow banking entities would mainly benefit from a rush to sell concerned NPLs, at unfair prices, leading to the emergence of an inefficient secondary market. The proposed measure would finally be detrimental to the consumer protection within the EU, if it leads to the sale of NPLs to non-regulated entities with short term results objectives. Standardized prudential backstops could artificially breach long term relationship banks have with their customers, that may imply several lines of loans, some of them NPLs.</p>	The measure could be detrimental to consumer protection and create an inefficient NPL secondary market	[REDACTED]	Publish
7	2 - General Concept	2	3	Amendment	<p>Prudential backstops should not apply to retail credits</p> <p>For Retail consumer credits in particular the proposal seems not appropriate nor justified. In France Consumer credit institutions' recovery processes are really efficient with high and closely monitored recovery rates. The models used to assess recovery rates are based on sound statistical methodologies and data and the predictive models are regularly back-tested.</p> <p>Moreover, we consider that the matters the Commission is currently working on are mainly corporate loans issues, and the inclusion of retail consumer credit in the scope would raise consumer protection issues.</p> <p>For these reasons, we would recommend that the proposed statutory prudential backstops should not apply to retail credits (including corporate retail) or at least, that the full coverage of retail credits turned non-performing should only be required after 8 years.</p>	Prudential backstops should not apply to retail credits	[REDACTED]	Publish
8	2 - General Concept	2	3	Deletion	<p>Date of entry into force</p> <p>An entry into force in 2018 is too early to be operationally implemented in institutions' IT systems, especially since IFRS 9 will also enter into force in 2018.</p> <p>A transitional period to prepare and implement induced changes would be necessary.</p> <p>We underline that the juxtaposition of several measures makes it impossible to appreciate their effects individually. Observation periods are necessary to assess the different impacts of accounting and prudential requirements.</p>	Date of entry into force in 2018 is too early	[REDACTED]	Publish
9	4 - Prudential provisioning backstop	4	10	Amendment	<p>The measure would restrict access to credit</p> <p>Additional prudential backstops for NPL provisioning are likely to reduce the financial capacity of credit institutions.</p> <p>The obligation of 100% provision within 2 years of unsecured exposures would have an impact on institutions granting credit processes with an expected eviction effect of the weakest counterparties (lower income households, start-ups...). It could lead to systematic requests of collateral, and even to over collateralization, especially for SMEs. It would transform risk analysis currently based on a cash flow perspective to an analysis based on a single collateral valuation perspective. The valuation of the collateral is only a part of recoverability analyses, that also rely on the expert judgement of the institutions and their knowledge of their customers.</p> <p>Institutions have developed sophisticated organisations and resources to follow NPLs and instalments recovery, leading sometimes to long term cash flows, with which standardised prudential backstops would not be consistent. They know their customers and so can develop adequate strategies to minimize losses through individualized approaches. A standardised "one size fits a fit" requirement would prevent institutions from adopting the most adequate strategy, and so could end up in amplifying the losses in their balance sheet and discouraging them to actively manage their NPL portfolios to generate cash flows.</p> <p>NPL cash flows, even though reduced or delayed compared to the initial anticipated instalments often rely on the possession of the collateral, which is an essential lever to incentivise debtors to pay. Any obligation to realise a collateral in a certain timeframe in order not to reach prudential backstops would reduce the efficiency of individualized recovery strategies. At least, NPLs that generate cash flows should be excluded from the proposed measure.</p> <p>For factoring exposures for instance, most non-performance issues are due to final debtor late payment, but generate cash flows. At least, the main types of collaterals related to factoring activities should be explicitly recognised. Namely credit insurance coverage for the debtors and bank guarantees would have to be considered as valuable collaterals. The ability to combine several collaterals together, by adding the respective expected recovery expectations should also have to be considered.</p> <p>For leasing exposures especially, we observe that having the legal ownership of an asset (which is key for the customer) is essential. In case of legal procedures, end customers would often continue to pay for their leasing contracts. This expected cash flow, which is not a guarantee per se is yet taken into consideration in leasing institutions' NPL management, on top of the valuation of the asset. Not giving the possibility to consider it in the prudential provisioning can be penalising.</p> <p>It is not relevant to consider that contracts after 7 years should be fully provisioned. The contracts that remain after 7 years are kept by the institution just because the institution considers that there is still potential for collecting additional amounts. Moreover, in some situation, although a contract would be fully provisioned after 7 years according to the proposition, institutions would still have to keep the NPL and manage it until they are taxwise authorised to close the file (in France "certificat d'irrecouvrabilité"). So that finally, no full operational relief is to be expected.</p>	The measure would restrict access to credit	[REDACTED]	Publish

ASF response to the ECB consultation on its Addendum to the Guidance to banks on non-performing loans (NPLs): Prudential provisioning backstops for non-performing exposures

As a unique representative body of all the French specialised credit institutions and financial institutions which represents 290 entities, ASF contributes to an appropriate recognition of the specialised financial activities like equipment and real estate leasing, factoring, consumer credit and auto loans and leases, mutual guarantee societies which – with an outstanding of more than €230 billion in 2016 – accounts for about 20% of total amount of credits to the real economy in France.

We would like to thank the European Central Bank (ECB) for giving us the opportunity to respond to its proposal of addendum to its Guidance to banks on non-performing loans. We agree on the importance of an efficient supervision on Non-performing loans, but we consider that the ECB Addendum to the existing Guidance would not bring supplementary efficiency.

Redundancy with existing Pillar 2 framework

Within current Single Supervisory Mechanism (SSM) the ECB has legitimacy to require micro prudential measures to a specific bank whereas the proposed addendum provides for systematic and standardized measures for all credit institutions.

The proposed prudential provisioning backstops are not relevant since all EU credit institutions are not equally concerned by NPL issue. French credit institutions are actively managing the level and the “quality” of their NPL portfolio. EBA describes EBA in its Quarterly report (June 2017) the improvement in France between September 2016 and June 2017, from 3,9% to 3,4% (141 Bn€) with a 50,8% level of provisioning, above the average level within the EU. It seems not fair to impose to all credit institutions additional prudential constraints, when the SSM already allows supervisors for micro-prudential specific measures.

We share both Council’s and EP’s view on the fact that the legislator has conferred supervisory tasks on the ECB on the basis of this Treaty provision, that the ECB shall apply « all relevant Union law »(i.e. CRR and CRD rules as well as EBA guidelines) while exercising these task, and that the ECB cannot adopt instruments of soft law intended to ensure systematic compliance by all banks of criteria for minimum provisioning which have not yet been harmonised by the EU legislator and for which application banks themselves are granted a margin of discretion under current EU legislation.

Risk of stigmatizing the entire EU banking system

A “one size fits all” prudential approach on NPLs seems not appropriate, since it would stigmatize all the European credit institutions instead of targeting those who need dedicated Pillar 2 approaches. The proposed measure is contradictory with a required application of the proportionality principle and carries a risk of image for the whole EU banking sector.

At least, the proposal should include proportionality triggers based on actual NPL rates.

The proposal would deny the value of the new IFRS 9 accounting regime and raise taxation issues

The proposal leads to disconnect accounting rules and prudential rules by introducing an additional capital charge to the IFRS 9 provisioning level. It may be seen as considering that the new IFRS 9 standard is not prudent enough, and so as discrediting new IFRS9 accounting provisions. Moreover, creating a prudential and accounting mismatch could have potential fiscal effects questioning the principle of transparency and leading to a lack of homogeneity among credit institutions. Prudential

provisioning backstops may lead to an increase in accounting impairment and consequently to tax base reductions that could be seen by taxation authorities as not reflecting the economic reality.

There seems to be contradictions with current modelling rules and practices.

The overlap with RWA for defaulted assets should be clarified: in case of 100% prudential backstop, it should be clarified whether RWA for defaulted loans would any longer be needed. Besides, introducing prudential backstops means de facto the derecognising of the Best Estimate of Expected Losses models built by the institutions using advanced internal models.

Inconsistency with national legal procedures timeframes

A standardized period of 2 years for 100% prudential provisioning for unsecured exposures seems arbitrary and too short. It does not reflect legal procedure timeframe that can be delayed for reasons beyond the institutions' control. In France, the debtor has the legal means to contest every aspect of a given credit (actual rate of the credit, credit's inadequacy, perimeter of the insurance, etc.), which has the effect of suspending the legal procedure.

The measure could be detrimental to consumer protection and create an inefficient NPL secondary market

Non-regulated shadow banking entities would mainly benefit from a rush to sell concerned NPLs, at unfair prices, leading to the emergence of an inefficient secondary market. The proposed measure would finally be detrimental to the consumer protection within the EU, if it leads to the sale of NPLs to non-regulated entities with short term results objectives. Standardized prudential backstops could artificially breach long term relationship banks have with their customers, that may imply several lines of loans, some of them NPLs.

Prudential backstops should not apply to retail credits

For Retail consumer credits in particular the proposal seems not appropriate nor justified. In France Consumer credit institutions' recovery processes are really efficient with high and closely monitored recovery rates. The models used to assess recovery rates are based on sound statistical methodologies and data and the predictive models are regularly back-tested.

Moreover, we consider that the matters the Commission is currently working on are mainly corporate loans issues, and the inclusion of retail consumer credit in the scope would raise consumer protection issues.

For these reasons, we would recommend that the proposed statutory prudential backstops should not apply to retail credits (including corporate retail) or at least, that the full coverage of retail credits turned non-performing should only be required after 8 years.

Date of entry into force in 2018 is too early

An entry into force in 2018 is too early to be operationally implemented in institutions' IT systems, especially since IFRS9 will also enter into force in 2018.

A transitional period to prepare and implement induced changes would be necessary.

We also underline that the juxtaposition of several measures makes it impossible to appreciate their effects individually. Observation periods are necessary to assess the different impacts of accounting and prudential requirements.

The measure would restrict access to credit

Additional prudential backstops for NPL provisioning are likely to reduce the financial capacity of credit institutions.

The obligation of 100% provision within 2 years of unsecured exposures would have an impact on institutions granting credit processes with an expected eviction effect of the weakest counterparties (lower income households, start-ups...). It could lead to systematic requests of collateral, and even to over collateralization, especially for SMEs. It would transform risk analysis currently based on a cash flow perspective to an analysis based on a single collateral valuation perspective. The valuation of the collateral is only a part of recoverability analyses, that also rely on the expert judgement of the institutions and their knowledge of their customers.

Institutions have developed sophisticated organisations and resources to follow NPLs and instalments recovery, leading sometimes to long term cash flows, with which standardised prudential backstops would not be consistent. They know their customers and so can develop adequate strategies to minimize losses through individualized approaches. A standardised “one size fits all” requirement would prevent institutions from adopting the most adequate strategy, and so could end up in amplifying the losses in their balance sheet and discouraging them to actively manage their NPL portfolios to generate cash flows.

NPL cash flows, even though reduced or delayed compared to the initial anticipated instalments often rely on the possession of the collateral, which is an essential lever to incentivise debtors to pay. Any obligation to realise a collateral in a certain timeframe in order not to reach prudential backstops would reduce the efficiency of individualized recovery strategies. At least, NPLs that generate cash flows should be excluded from the proposed measure.

For factoring exposures for instance, most non-performance issues are due to final debtor late payment, but generate cash flows. At least, the main types of collaterals related to factoring activities should be explicitly recognised. Namely credit insurance coverage for the debtors and bank guarantees would have to be considered as valuable collaterals. The ability to combine several collaterals together, by adding the respective expected recovery expectations should also have to be considered.

For leasing exposures especially, we observe that having the legal ownership of an asset (which is key for the customer) is essential. In case of legal procedures, end customers would often continue to pay for their leasing contracts. This expected cash flow, which is not a guarantee per se is yet taken into consideration in leasing institutions NPL management, on top of the valuation of the asset. Not giving the possibility to consider it in the prudential provisioning can be penalising.

It is not relevant to consider that contracts after 7 years should be fully provisioned. The contracts that remain after 7 years are kept by the institution just because the institution considers that there is still potential for collecting additional amounts. Moreover, in some situation, although a contract would be fully provisioned after 7 years according to the proposition, institutions would still have to keep the NPL and manage it until they are taxwise authorised to close the file (in France: “*certificat d'irrecouvrabilité*”). So that finally, no full operational relief is to be expected.