EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

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

Institution/Company

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General comments

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	1 - Background		2	Amendment	ESBG appreciates the concretion of the competent authorities' intentions with respect to addressing the issue of Non-Performing Loans (NPLs) in Europe. However, we have to criticise the approach of introducing non-binding yet enforceable quantitative prudential measures for all banks in Europe before even issuing comprehensive guidelines on NPL management also applicable to all banks in Europe. From previous publications and communication by competent authorities, we understand that any guidance given by the competent authorities should enable banks to take full ownership of any problems relating to their NPL portfolios themselves. Thus we are surprised by an intervention as innermost as enforcing standardised provisioning levels.	In ESBG's opinion, the Addendum seems to be a one-size-fits-all approach. We are convinced that banks should instead be enabled to take full ownership of any problems with their NPL portfolios themselves.	[redacted]	Don't publish
2	1 - Background		2	Amendment	ESBG believes that before introducing additional prudential measures to deal with new stocks of NPLs in the banks' bal-ance sheet, authorities should be given more time to assess the IFRS9 implementation outcome. The IFRS 9 impairment models are intended to be more responsive to expected changes in both micro and macroeconomic actual and ex-pected conditions due to the forward looking nature of the framework. It certainly should provide the grounds to avoid the "too little, too late" issue experienced over the last finan-cial crisis on credit loss provisioning under IAS 39. IFRS 9 provisioning models implementation should result in a more prudent accounting approach when dealing with im-pairments and it will certainly contribute to an appropriate provisioning of NPLs, taking full account of the nature of every single asset. Although the addendum and IFRS 9 act from different perspectives (prudential vs. accounting) both measures pursue very similar objectives. Compared to the Addendum, IFRS 9 is a much more robust and sophisticated framework and its implementation has required banks to un-dertake significant efforts and investment, to better under-stand and be able to predict the size and nature of credit loss-es. In this regard, the addendum would only act as an additional layer on top of the new provisioning standards. The effects of IFRS 9 in relation with a NPLs prudent valuation and provi-sioning should be properly assessed before adding unnecessary additional layers that could only bring up redundant and effortless regulatory constraints to credit flow.	The addendum would only act as an additional layer on top of the new provisioning standards. The effects of IFRS 9 in relation with a NPLs prudent valuation and provi-sioning should be properly assessed before adding unnecessary additional layers that could only bring up redundant and effortless regulatory constraints to credit flow.	[redacted]	Don't publish

3	2 - General Concept	2.3	5	Amendment	ESBG believes that the Addendum is not in line with the Pillar 2 framework. The Addendum appears to be a Pillar 1 tool disguised as pillar 2, as it seems to introduce general rules that all banks have to apply – "If the applicable accounting treatment does not fulfil the prudential provisioning backstop, banks should adjust their Common Equity Tier 1 capital on their own initiative, applying Article 3 of the CRR on the application of stricter requirements". In our view, this passage does not seem to be in line with a pillar 2 tool, as there is no voluntariness, but rather the introduction of an additional requirement. The proposed "comply-or-explain" mechanism also does not seem to be in line with a pillar 2 tool, as the burden of proof to comply is placed on the bank. The proposed measure has some characteristics that make it seem like more of a pillar 1 tool than a pillar 2 tool. ESBG believes that if the measure is introduced, the concept should be designed in line with the legal framework and be clearly constructed as a pillar 2 tool (and not have characteristics of a pillar 1 tool, which leaves room for interpretation).	The Addendum appears to be a Pillar 1 tool disguised as pillar 2. ESBG believes that if the measure is introduced, the concept should be designed in line with the legal framework and be clearly constructed as a pillar 2 tool (and not have characteristics of a pillar 1 tool, which leaves room for interpretation).	[redacted]	Don't publish
4	2 - General Concept	2.3	6	Clarification	We presume that the capital deduction in accordance with Article 3 of the CRR should be interpreted as an "other own funds reduction" within the meaning of Article 159 of the CRR, and that it should therefore be taken into consideration in the comparison of provisioning. ESBG would like some clarifications in this respect.		[redacted]	Don't publish
5	2 - General Concept	2.3		Amendment	In ESBG's view, the introduction of prudential backstops could induce bank clients to explicitly exploit this regime in the form of moral hazard, i.e. lower willingness to (re)pay loans, knowing that banks eventually need to write off NPLs.	The introduction of a prudential backstop could induce bank clients into moral hazard.	[redacted]	Don't publish
6	2 - General Concept			Amendment	ESBG believes that the current ECB approach raises doubts about banks' profitability, viability and solvency. We see the competent authorities' intervention as a risk for banks in the public opinion by putting them under the guardianship of the competent authorities again, raising doubts on their profitability, viability and solvency rather than empowering and enacting them with the relevant tools to deal with high levels of NPLs both now and in the future.	The addendum raises doubts on banks profitability, viability and solvency rather than empowering and enacting them with the relevant tools to deal with high levels of NPLs both now and in the future.	[redacted]	Don't publish
7	2 - General Concept			Amendment	ESBG questions the consistency of the competent authorities' intentions with other suggested measures such as fostering a secondary market for NPLs, encouraging sales and minimizing bid-ask gaps, or the setup of national Asset Management Companies (AMCs) for the purpose of relieving banks from constraints caused by high NPL levels. In our view, mandatory provision levels could significantly impair the value of NPLs artificially without any relation to true economic value for banks intending to sell NPLs and encourage investors to just sit and wait in order to pocket additional returns on their investments. This would ultimately contradict the competent authorities' intentions of an unbiased, liquid secondary market for NPLs. In addition, mandatory provision levels could enable national AMCs to take on NPLs at low prices; thus, shifting potential intrinsic value in NPLs to National AMCs rather than keeping them with the banks that needed to immediate initial hits to their capital base – contradicting the intentions of the competent authorities to capitalize banks more strongly again. Generally speaking, we think that the ECB Addendum should be seen in context with other suggested measures, meaning that their reciprocity should be assessed clearly before introducing the measure.	Mandatory provision levels could significantly impair the value of NPLs artificially.	[redacted]	Don't publish
8	2 - General Concept			Amendment	In terms of refinancing, ESBG believes that as creditor's cooperation does not imply a hold in the vintage counter, the refinancing/restructuring activity may potentially slow down. However exceptional situations are envisaged but need to be justified periodically.	The refinancing/restructuring activity may potentially slow down.	[redacted]	Don't publish

9	2 - General Concept			Amendment	ESBG understands the intention of the competent authorities’ intervention as a tool for minimizing or even limiting the build-up of non-performing loans in the future and speeding up loss recognition. However, we would prefer additional momentum and drive in ongoing macro-prudential efforts, e.g. improving the efficiency of the judicial system and ensuring timely out-of-court collateral enforcement processes, to address NPL resolution faster and more efficiently as well as to avoid the diminishing of value of the underlying NPLs due to process constraints over which banks have no influence.	Instead of the current approach, ESBG would prefer additional momentum and drive in the ongoing macro-prudential efforts.	[redacted]	Don't publish
10	2 - General Concept			Amendment	In contrast to the competent authorities’ intentions, mandatory provisioning levels in a one-size-fits-all approach might even discourage banks to support clients with viable long-term repayment capacities and/or business models but short-term bridge financing needs. Such cases might not only lead to higher net loss levels in the banks’ portfolios due to implicit deceptive incentives but also affect the real economy – especially small and medium-sized enterprises and private individuals.	In ESBG’s opinion, the proposed one-size-fits-all approach might discourage banks from supporting clients with viable long-term repayment capacities and/or business models.	[redacted]	Don't publish
11	2 - General Concept	2.3		Clarification	ESBG would appreciate some clarifications from the ECB on a dissolved adjustment of value. Considering that an adjustment of value can be dissolved and gained again, we would like understand how this aspect would be treated in line with the Addendum.		[redacted]	Don't publish
12	2 - General Concept	2.3		Clarification	ESBG would much appreciate clarifications on the IFRS9 issue. We would like to stress that compliance with the addendum (2 years coverage, 7 years full value adjustment) might not be in line with IFRS9, which states that the adjustment of value results after the quantification of three scenarios and not “automatically” after two or seven years.		[redacted]	Don't publish
13	2 - General Concept			Amendment	ESBG believes that regulatory heterogeneity in terms of asset repossession and foreclosure procedures lead to an unleveled playing filed across the EU banking system.	Regulatory heterogeneity lead to an unleveled playing filed across the EU banking system.	[redacted]	Don't publish
14	2 - General Concept			Amendment	ESBG believes that before exercising further pressure in entities’ balance sheets, the currently underdeveloped secondary market, being recognized as a relevant tool for NPLs reduction, should be addressed in terms of regulation.	Before introducting additional measures, secondary markets for NPLs should be addressed in terms of regulation.	[redacted]	Don't publish
15	2 - General Concept			Amendment	With regard to non-performing clients for reasons other than delinquency, as there is no special treatment for this category of non-performing clients, misalignment of incentives in terms of proper identification might occur and ultimately affect business development.	Misalignment of incentives in terms of proper identification might occur and ultimately affect business development.	[redacted]	Don't publish
16	3 - Definitions	3.1		Amendment	The vintage counter is defined to reset to zero only with changes in the performing status. In ESBG’s opinion, this condition might incentivise to prevent exposures from becoming NPLs and to return those new NPLs to performing status.	This condition might incentivise to prevent exposures from becoming NPLs and to return those new NPLs to performing status.	[redacted]	Don't publish
17	3 - Definitions	3.2		Clarification	Page 6 of the proposed addendum to the NPL guidance explicitly allows the option to deviate from the backstops on a comply-or-explain basis. In this regard, to enhance the certainty of application at the institutions, ESBG would call for examples of stable value collateral or exemptions to be included.		[redacted]	Don't publish