EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

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

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General comments

In paragraph 2.1 of the consultation document, the ECB states *-inter alia-* that banks are expected to explain any deviations with respect to the Addendum although it expressly recognizes that the Addendum itself "is non-binding". In this respect (and as an introductory remark) we would like to point out that the ECB should not have the power to basically supplement– through the Addendum – First Pillar legal provisions regulating exposures' prudential treatment.

In fact, we believe that the legal provisions contained in the CRD IV, CRR and Regulation 1024/2013 (conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions) should be applied exclusively within the framework of a supervisory activity and not as a basis for setting out *de facto* binding provisions addressed not to a single entity but to the entire system. As a matter of fact, when the aforementioned legislative provisions expressly assign the task to issue level 2 provisions, they make reference to Member States and not to Competent Authorities.

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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	2.1	3	Clarification	The prescriptions contained within the Addendum should not be applied also to companies whose core activity consists in purchasing and managing NPLs (following a substainable business model), given its unfitting to their activity and being potentially capable of undermining the NPLs market structure. By lowering the profitability of purchasing and managing NPLs, it would be more difficult for the originator bank to sell them at a later time.The aim of the Addendum should be the introduction of a capital buffer additional to a share of residual and incidental assets of a traditional bank, although this introduction could generate distorting effects in its activity. Even more so, the introduction of a so strict requirement on the whole credit stock held by a specialized companies is less acceptable; it can be demonstrated by analyzing its business model that it is capable to earn profits and create value thanks to a dedicated personnel, IT systems, procedures and know-how completely focused on this activity. Keeping in mind that the discount applied by these specialized companies includes not only a premium for the risk assumed (which theoretically is the same the selling bank would have faced) but also the cost of managing and funding them, and finally a profit margin, the application of the backstop on the same timeline appears heavily unjustifiable and substantially inappropriate. Necessarily NPLs are derecognized by a traditional bank and by a specialized companies at a totally different pace: the former needs to consider the cost of risk to incorporate it within prices, and thus needs to be sure about NPLs values with a sound and fast management of impaired credit positions; the latter, on the other hand, participates to the process by paying to the traditional bank a price which theoretically equals the value that the originator bank would earn during time, net of the profit justified by the longer collection period. However, internal models for portfolio valuation and management use criteria similar to backstop an a longer term basis (5 years for unsecured credits and at least 10 years for secured ones).	We believe that the prescriptions contained within the Addendum should not be applied also to companies whose core activity consists in purchasing and managing NPLs (following a substainable business model), given its unfitting to their activity that relys on long-lasting collection procedures, and being potentially capable of undermining the NPLs market structure. By lowering the profitability of purchasing and managing NPLs, it would be more difficult for the originator bank to sell them at a later time. Therefore, using a common temporal approach as for both traditional bank and companies whose core activity consists in purchasing and managing NPLs is substantially inappropriate because necessarily NPLs are derecognized by a traditional bank and by a specialized companies at a totally different pace.	[redacted]	Publish
2	3 - Definitions	3.1	7	Amendment	Restructuring plans aim at restoring the economic-financial conditions to ensure counterparty business continuity. Insolvency regulation in Europe and Bank's objective go well beyond the mere credit recovery, pursuing a firm rebalancing necessarily spread along an adequate and generally material period of time. In addition, the negotiations under insolvency regulation usually take a significant amount of time (often beyond one year) and according to the Guidance on NPL the Bank is asked to classify at least in the Unlikely to Pay category well in advance vs. the beginning of negotiations for a restructuring. This would lead to some paradoxical situation for unsecured loan in which when the bank signs the Debt Restructuring Agreement, it could have potentially fully provisioned the credit without having the possibility to reclassify in the performing status the exposure. This element would discourage the bank to pursue an adequate and safe route for the restructured counterparty. Such positions are subject to specific and reinforced monitoring to verify on a regular basis that counterparty's behavior is in line with the agreed plan and to eventually timely detect any deviations and deterioration signals. Backstop application is more suitable to exposures towards counterparts where business continuity is compromised ("gone concern") and where the bank activity is driven by credit recovery based on collaterals. This logic is typical of cases where the bank has terminated the credit contract and not applicable to borrowers with a regular restructuring plan in place. Similar considerations can be raised for counterparties subject to forbearance measures when the concessions have been provided to non performing clients.	The adoption of the Addendum 's prescription on going concern and restructuing positions would lead to discourage and limit the corporate restructuring performed by the banking system with impact on overall economic activity	[redacted]	Publish
3	3 - Definitions	3.1	7	Amendment	Vintage calculation from contract resolution: the NPL status correctly included in the application perimeter would be the Bad Loans only. Specifically the vintage calculation should start from the contract resolution date and not from classification to NPE. Only following the contract resolution, legal proceedings (like foreclosure) can be put in place and it's therefore adequate to consider collateral effectiveness.	A predefined timing, not accounting for the proper vintage calculation, would force the Bank to limit restructuring and cure periods, under the threaten of huge capital requirements. This would undermine the relationship Bank - Client and affect the overall economic system.	[redacted]	Publish
4	2 - General Concept	2.1	3	Deletion	ASSOSIM supports the proposal of the EU Commission on the application of statutory prudential backstops only on new originated loans (after the entry into force of the new provisions) turning to NPLs and not to all new NPLs. Indeed the pricing applied to already granted loans didn't consider the additional capital burden implied by the Addendum.	It's fundamental to delete any retroactivity elements to avoid distortion and to allow for a fair pricing on newly originated transactions	[redacted]	Publish