

## Comments to the Public consultation on a draft Addendum to the ECB Guide on options and discretions available in Union Law

### Chapter 9 - Governance arrangements and prudential supervision

#### 9.3. Combining the functions of Chairman and CEO (article 88.1.e of CRD IV)

The ECB states right at the start of this point 9.3. of the consultation document that it **“considers that the separation of the executive and non-executive functions is the rule for credit institutions”**

We understand this approach is not in line with article 88.1.e of CRD IV and exceeds the scope of this document, for the following reasons:

- 1) CRD IV, establishes that: **“the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities.”**

This rule does not imply that the chairman on an institution should not have executive powers, but establishes the prohibition to exercise the functions of the *Chairman and CEO* by the same person, with the aim to avoiding the concentration of power in a single person.

This is also be the case of the Guidelines of the Basel Committee on Banking Supervision setting the Corporate Governance principles for banks (July 2015) mentioned by the ECB in the consultation paper. Paragraph 62 of this Guidelines acknowledge that “In jurisdictions where the chair is permitted to assume executive duties, the bank should have measures in place to mitigate any adverse impact on the bank’s checks and balances, eg by designating a lead board member, a senior independent board member or a similar position and having a larger number of non-executives on the board.” Hence, admitting the possibility to have an executive chairman.

Likewise, the European Banking Authority’s Guidelines on Internal Governance (GL 44), recommend in point 14.5 that *“In a one tier system, the chair of the management body and the chief executive officer of an institution should not be the same person. Where the chair of the management body is also the chief executive officer of the institution, the institution should have measures in place to minimise the potential detriment on its checks and balances”*.

The three documents mentioned above establish the rule or recommendation to split the roles of chairman and CEO, but in no event limit the possibility to have an executive chairman.

The ECB’s approach is more restrictive than the provisions mentioned above, as it states the need to separate the “executive and non-executive functions”.

- 2) The ECB Guide on options and discretions available in Union Law should establish the procedures for the granting of the authorization for the combination of functions of the Chairman and CEO, following the CRD IV's empowerment, but in our opinion, it should not contain such a prescriptive statement as the starting paragraphs of this point 9.3.

Considering the above, we suggest the following amendments to point 9.3:

~~“The ECB considers that the separation of the executive and non-executive functions is the rule for credit institutions. Sound principles of corporate governance require that both functions be exercised in line with their responsibilities and accountability requirements.”~~

~~The responsibilities and accountability requirements of the chairman of the management body in its supervisory function (Chair) and the chief executive officer (CEO) diverge, reflecting the different purposes of each supervisory function and management function respectively.~~

~~Moreover, the~~ The Corporate Governance principles for banks (Guidelines) of the Basel Committee on Banking Supervision (July 2015) recommend that in order “to promote checks and balances, the chair of the board should be an independent or non-executive board member. In jurisdictions where the chair is permitted to assume executive duties, the bank should have measures in place to mitigate any adverse impact on the bank's checks and balances, eg by designating a lead board member, a senior independent board member or a similar position and having a larger number of non-executives on the board.” (paragraph 62).

The authorisation to combine the ~~two functions of the chairman of the management body in its supervisory function and of a chief executive officer~~ of should, therefore, be granted only in exceptional cases and only where corrective measures are in place to ensure that the responsibilities and accountability obligations of both functions are not compromised by their being combined.

The ECB intends to assess applications for the combination of the two functions in line with the above- mentioned Basel principles and the European Banking Authority's Guidelines on Internal Governance (GL 44), where it is recommended that ~~in the case of combination of the two functions,~~ “Where the chair of the management body is also the chief executive officer of the institution, the institution should have measures in place to minimise the potential detriment on its checks and balances”.