

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 March 2016

on a proposal for a regulation amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers**(CON/2016/10)**

(2016/C 130/01)

Introduction and legal basis

On 12 January 2016 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers ⁽¹⁾ (hereinafter the 'proposed regulation'). On 8 February 2016, the ECB was consulted on the same proposal by the European Parliament.

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 falling within the ECB's fields of competence, in particular in connection with the European System of Central Bank's task pursuant to Article 127(5) of the Treaty to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system.

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.

1. General observations

1.1 The objective of the proposed regulation is to ensure that commodity dealers (investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council ⁽²⁾ and to whom Council Directive 93/22/EEC ⁽³⁾ did not apply on 31 December 2006) do not become subject to all requirements contained in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁴⁾ concerning large exposures and own funds on 1 January 2018 without a conscious and informed decision that such treatment is appropriate for them.

1.2 While the large exposures and own funds requirements of Regulation (EU) No 575/2013 do not seem to be tailor-made for commodity dealers, a decision to extend the exemptions from these prudential requirements should take into consideration any potential systemic risks posed by commodity dealers. Such risks could stem from a number of sources, in particular:

- the total amount of leverage,
- the stability of capital structures,
- linkages with the banking system through debt and connected default rates,

⁽¹⁾ COM(2015) 648 final.

⁽²⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

⁽³⁾ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27).

⁽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).

- engagement in shadow-banking activities (e.g. securitisation of receivables or inventories),
- the possibility of spillover effects to other firms in financial distress which could be caused by defaults in derivatives positions, in particular speculative over-the-counter derivatives positions which are not centrally cleared, but also by adverse movements in the underlying, causing mark-to-market losses on futures positions that exceed the mark-to-market gain on the inventory held as collateral, with the consequence that the counterparty must be paid the variation margin.

1.3 The ECB has so far not identified any concrete indications of systemic risk created by commodity dealers that would make it strictly necessary at this stage to remove the exemptions for requirements concerning large exposures and own funds that apply at present. Commodity dealers active in Europe are generally less leveraged and have more resilient capital structures than banks. They, typically, have relatively low asset-to-equity ratios and do not seem to engage in bank-like maturity and liquidity transformations. Furthermore, linkages with the banking system through debt and connected default rates seem rather limited. Direct exposure of banks to commodity dealers appears to be relatively minor, mitigating potential contagion risks. Finally, despite the considerable growth of the commodity derivatives markets over the past 15 years, there is no conclusive evidence that commodity derivatives trading has adverse effects on the wider financial system. However, a detailed impact analysis appears to be a necessary step in terms of taking the most appropriate decision regarding the removal or the temporary extension of the exemptions. In particular, consideration should be given to level playing-field issues relative to credit institutions which trade in commodities.

1.4 The exemptions should indeed only be of temporary nature. The European Commission is expected to present a proposal for a comprehensive review of the prudential regulation of investment firms. The rationale for, and the objective of, a temporary extension of the exemptions should be confined to the avoidance of significant regulatory changes before such a comprehensive review, which should be carried out as soon as possible.

Done at Frankfurt am Main, 3 March 2016.

The President of the ECB

Mario DRAGHI
