



OPINION OF THE EUROPEAN CENTRAL BANK
of 19 September 2014
on the separation and regulation of banking activities
(CON/2014/70)

Introduction and legal basis

On 15 June 2014, the European Central Bank (ECB) received a request from the French Minister for Finance and Public Accounts for an opinion on a draft ministerial order implementing the Law on the separation and regulation of banking activities of 2013 (hereinafter the ‘draft ministerial order’).

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 and the sixth indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft ministerial order relates to the rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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. Purpose of the draft ministerial order

1.1 The draft ministerial order implements the first Title of the Law on the separation and regulation of banking activities². This law applies to credit institutions, financial holding companies and mixed financial holding companies (hereinafter ‘designated financial institutions’). Its purpose is to separate banking activities that finance the economy from speculative operations. Although the latter must be ring-fenced in dedicated subsidiaries, credit institutions can continue proprietary trading relating to financial instruments within certain limits and subject to certain conditions.

The draft ministerial order reinforces requirements relating to internal controls, requires the provision of market activity indicators, lays down conditions for authorised operations with hedge funds and sets up procedures for the oversight of such operations.

1.2 First, in respect of activities that may be carried out other than through a dedicated subsidiary, designated financial institutions that exceed the threshold set by Article R. 511-16³ of the Monetary and Financial Code (MFC) shall identify internal units tasked with conducting transactions relating to financial instruments and classify those units into one of the categories set out in paragraph 1 of

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² Law No 2013-672 of 26 July 2013.

³ Decree No 2014-785 of 8 July 2014.

Article L. 511-47 of the MFC⁴ in order to ensure that these units conduct financial operations within the limits of their mandates.

At least once a year, designated financial institutions shall provide to the Autorité de Contrôle Prudentiel et de Résolution (ACPR, Prudential Control and Resolution Authority) and, if relevant, the Autorité des Marchés Financiers (AMF, Financial Markets Authority), a variety of market activity indicators, an organisational chart of the internal units, and an explanation of the way in which these internal units' mandates have been established and monitored. The ACPR shall verify that risk limits consistent with such mandates are defined for each internal unit.

- 1.3 Second, the draft ministerial order provides exceptions to the general prohibition contained in Article L. 511-47 of the MFC on the execution by credit institutions of operations with hedge funds. These exceptions permit credit institutions to conduct such operations when guaranteed by securities considered as adequate under the criteria laid down in the draft ministerial order.
- 1.4 Finally, with regard to large exposure risk, the draft ministerial order imposes an exposure limit equivalent to 10 % of the own funds of the dedicated subsidiary on the rest of the financial group.

2. Observations

- 2.1 In line with its previous opinion on the Law on the separation and regulation of banking activities⁵, the ECB reiterates that since these measures primarily address internationally active credit institutions, coordination and consistency in the authorities' regulatory approach are of the utmost importance in order to avoid regulatory arbitrage. This is particularly true in view of the ongoing preparatory work in respect of the proposal for a regulation on structural measures improving the resilience of EU credit institutions⁶. Consequently, the consulting authority should closely monitor the development of Union legislation and consider whether it is appropriate to seek alignment with the forthcoming rules to be adopted at Union level.
- 2.2 The impact of the forthcoming allocation of supervisory tasks within the Single Supervisory Mechanism between the national authorities and the ECB should be taken into account. Some of the activities provided for in the draft ministerial order will fall within the ECB's competence in respect of significant credit institutions after 4 November 2014. These include, for instance, the monitoring of remuneration paid to individuals of the internal units.
- 2.3 More generally, the ECB's interpretations of criteria set out in relevant Union law⁷ should be taken into account by the ACPR when assessing such criteria pursuant to the draft ministerial order. For instance, the securities and guarantees criteria defined in Regulation (EU) No 575/2013 of the

4 *ibid.*

5 ECB Opinion CON/2012/106, paragraph 2. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

6 COM(2014) 43 final.

7 Article 4(3) of Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

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European Parliament and of the Council⁸ should be taken into account when assessing the criteria for securities to be considered to provide adequate guarantees for credit institutions when entering into transactions with hedge funds (Article 7 of the draft ministerial order).

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 19 September 2014.

[signed]

The President of the ECB

Mario DRAGHI

⁸ 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).