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PRESS RELEASE

ECB LAUNCHES CONSULTATION ON HARMONISING SUPERVISORY RULES FOR BANKS SUPERVISED BY NATIONAL COMPETENT AUTHORITIES

- ECB aims to harmonise certain options and discretions in Union law for banks under its indirect supervision to ensure a level playing field and limit compliance costs for banks
- Draft guideline and draft recommendation published for consultation with the public
- Consultation period runs from today until 5 January 2017

The European Central Bank (ECB) today launches a public consultation on a draft guideline and recommendation concerning the exercise of options and discretions (O&Ds) available in Union law for banks it does not directly supervise (less significant institutions or LSIs). The aim is to harmonise the way banks are supervised by national competent authorities (NCAs) in the 19 countries of the Single Supervisory Mechanism (SSM) and thereby ensure a level playing field and the smooth functioning of the euro area banking system as a whole.

The ECB decided in 2015 to harmonise the application of O&Ds for the direct supervision of the 129 significant institutions (SIs). For this purpose an ECB regulation, an ECB guide on the exercise of options and discretions available in Union law, an addendum to this guide and the ECB approach for the recognition of institutional protection schemes were adopted earlier this year. Today a consolidated version of the guide was published on the ECB's Banking Supervision website. In a second step, to ensure harmonisation across all banks, the ECB decided as part of its responsibility for the oversight of the system to also harmonise the exercise of O&Ds for LSIs by adopting a guideline and a recommendation. Further explanations regarding the choice and nature of the legal instruments used to harmonise the exercise of O&Ds are provided in the Questions and Answers.

The draft guideline lays out how NCAs should exercise seven O&Ds of general application for LSIs. For these O&Ds a specific policy rationale justifies the adoption of a uniform approach for all credit institutions in the countries in which the SSM applies. The guideline will be legally binding once approved by the Governing Council. The draft recommendation – a non-legally binding act – aims to harmonise 43 O&Ds that are not of general application but are assessed on a case-by-case basis. It also provides guidance to NCAs on how to assess these O&Ds individually. In addition, the draft recommendation covers eight O&Ds for which a common approach specific to LSIs is warranted.

Inconsistent application of O&Ds in SSM countries could potentially affect the overall robustness of the supervisory framework and the comparability of prudential requirements across credit institutions. This would make it difficult for market participants and the general public to gauge the soundness and regulatory compliance of credit institutions. The high number of such provisions also adds a layer of regulatory complexity and further increases compliance costs for banks, especially for firms operating across borders. There is also the potential for regulatory arbitrage.

The proposed approach for harmonising the exercise of O&Ds for LSIs was chosen following a careful analysis, focusing particularly on the principle of proportionality, i.e. to what extent specific policy recommendations may be warranted for the exercise of specific options. As a result, it is proposed that the NCAs should be able to take a flexible approach to a number of O&Ds where harmonisation is not considered necessary to ensure the robustness of supervision or to attain a level playing field.

The consultation on the two documents starts today and ends on 5 January. The relevant documents, comprising the draft guideline, the draft recommendation, an explanatory memorandum and Questions and Answers are available on the ECB's Banking Supervision website.

The ECB will hold a public hearing as part of this consultation on 17 November 2016, at its premises in Frankfurt am Main. The hearing will be webcast live on the ECB's Banking Supervision website. Information on registering for the public hearing and on how to submit comments can also be found on the website. Following the public consultation, the ECB will publish the comments received, together with a feedback statement and an assessment of the comments.

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