

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
Structural measures improving the resilience of EU credit institutions	
Subject	
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	
2.50.04 Banks and credit	
2.50.05 Insurance, pension funds	
2.50.08 Financial services, financial reporting and auditing	

Key players			
European Parliament			
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3399</a>	19/06/2015
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	HILL Jonathan	
European Economic and Social Committee			

Key events			
29/01/2014	Legislative proposal published	COM(2014)0043	Summary
25/02/2014	Committee referral announced in Parliament, 1st reading		
20/10/2014	Committee referral announced in Parliament, 1st reading		
26/05/2015	Vote in committee, 1st reading		
19/06/2015	Debate in Council	<a href="#">3399</a>	
03/07/2018	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2014/0020(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 114

Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ECON/8/00346

#### Documentation gateway

Legislative proposal		COM(2014)0043	29/01/2014	EC	Summary
Document attached to the procedure		SWD(2014)0030	29/01/2014	EC	
Document attached to the procedure		SWD(2014)0031	29/01/2014	EC	
Committee of the Regions: opinion		<a href="#">CDR1321/2014</a>	26/06/2014	CofR	
Economic and Social Committee: opinion, report		<a href="#">CES1791/2014</a>	09/07/2014	ESC	
Document attached to the procedure		N8-0034/2014 <a href="#">OJ C 328 20.09.2014, p. 0003</a>	11/07/2014	EDPS	Summary
European Central Bank: opinion, guideline, report		<a href="#">CON/2014/0083</a> <a href="#">OJ C 137 25.04.2015, p. 0002</a>	19/11/2014	ECB	Summary
Committee draft report		<a href="#">PE546.551</a>	22/12/2014	EP	

#### Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Structural measures improving the resilience of EU credit institutions

**PURPOSE:** to strengthen financial stability in the Union through structural reforms of large banks.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** the Unions financial system includes over 8,000 banks of different sizes, corporate structures and business models, a few of which exist in the form of large banking groups carrying out an all-encompassing set of activities. The financial crisis has demonstrated the interconnected nature of Union banks and the resulting risk to the financial system.

Since the start of the financial crisis, the Union and its Member States have engaged in a fundamental overhaul of bank regulation and supervision including the setup of the first steps towards a banking union. Given the need to ensure that all banks can be resolved, there was a need to assess whether more measures are needed to further reduce the probability and impact of failure of the largest and most complex banks.

A High-Level Expert Group ("HLEG") chaired by Erkki Liikanen, Governor of the Bank of Finland, was mandated for this purpose. The HLEG recommended the mandatory separation of proprietary trading and other high-risk trading activities into a separate legal entity within the banking group for the largest and most complex banks.

On 3 July 2013, the European Parliament adopted, by a large majority, [a resolution on reforming the structure of the EU banking sector](#) in which it welcomes structural reform measures at Union level to tackle concerns on banks that are too big to fail.

This proposal represents a critical part of the Union response to tackling the problem of too big to fail banks. It is accompanied by a [proposed regulation](#) to tackle another conduit for financial contagion namely, interconnectedness among market participants including systemic banks through opaque trading links in securities financing transactions.

**IMPACT ASSESSMENT:** on the overall costs and benefits of this proposal, the impact assessment carried out has been subject to qualitative analysis and quantitative modelling. While taking due account of the clear benefits derived from the diversity of banking models in Europe, the proposal intends to ensure that the delicate balance between the prevention of systemic risks and the financing of sustainable economic growth is maintained.

**CONTENT:** the proposed Regulation aims at enhancing financial stability in the Union by means of structural reform of large banks, thus complementing financial regulatory reforms already undertaken at Union level. It will apply to European banks that are identified as being of global systemic importance and exceed certain thresholds. The main points are as follows:

**Prohibition of proprietary trading:** the proposal provides that a credit institution and entities within the same group must not engage in proprietary trading in financial instruments and commodities. The proposal states that desks, units, divisions or individual traders activities specifically dedicated to taking positions for making a profit for own account, without any connection to client activity or hedging the entity's risk, would be prohibited.

To prevent banks from circumventing the prohibition by e.g. owning or investing in hedge funds, the proposal states that banks subject to the proprietary trading prohibition are also prohibited from investing in or holding shares in hedge funds (or certificates/derivatives linked to these), or entities that engage in proprietary trading or sponsor hedge funds.

The prohibition on proprietary trading becomes effective on 1 January 2017.

Potential separation of certain trading activities: the proposed Regulation also requires the competent authority to undertake a systematic review of certain other activities where there is the greatest risk that proprietary trading could be performed in contravention of the prohibition.

The competent authority is granted the power to require the separation of the high-risk activities (market-making, investment in/sponsoring of securitization and trading of certain derivatives) if these give rise to risks for the stability of the financial system. This aims to avoid the risk that banks will circumvent the proprietary trading ban by engaging in hidden proprietary trading activities and that the non-prohibited trading activities becomes too significant or highly leveraged.

The actual separation of trading activities will be preceded by an obligation for relevant banks to submit a "separation plan" to competent authorities. If the bank demonstrates to the satisfaction of the competent authority that these activities do not endanger the Union financial stability, the competent authority may decide not to require separation.

The provisions on separation of trading activities from credit institutions will become effective on 1 July 2018.

In order to ensure the effective and consistent supervision and the development of the single rule book in banking, the proposal envisages an important role for the European Banking Authority ("EBA"). The latter will be consulted by competent authorities when taking certain decisions as set out in this proposal and will prepare draft regulatory and implementing technical standards, and submit reports to the Commission.

BUDGETARY IMPLICATIONS: the proposal involves the hiring of two new temporary agents at EBA from January 2016. The new tasks will be carried out with the human resources available within the annual budgetary allocation procedure, and in line with the financial programming for agencies. Estimated impact on expenditure amounts to EUR 760 000 for the period 2016-2020.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

## Structural measures improving the resilience of EU credit institutions

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OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR (EDPS).

The proposal on structural measures improving the resilience of EU credit institutions and on the [proposal on the reporting and transparency of securities financing transactions](#) form part of the wide-ranging overhaul of financial regulation and supervision which the EU has undertaken since the onset of the financial crisis.

Each proposal involves the processing of personal data including the publication of details about individuals who have been subject to sanctions for breaches of the proposed rules.

The EDPS regrets that he was not consulted prior to the adoption of the proposals. He recognises the legitimate public policy goal behind these proposals, and welcomes the fact that some data protection safeguards are envisaged.

However, the EDPS recommends a fuller integration of respect for the rights to privacy and the protection of personal data by means of the following changes:

- the inclusion of a general provision for all processing of personal data;
- an appropriate maximum term in the proposal on transparency of securities financing transactions (SFTs) for personal information to be retained by counterparties to an SFT;
- regarding the provisions derogating from the obligation for confidentiality and professional secrecy in the proposal on transparency of SFTs: (i) clarification on whether or not personal data are within the scope of this derogation, and if so, the inclusion of a statement that those data may only be processed for compatible purposes and in accordance with applicable data protection rules; (ii) clarification whether personal data transfers to third countries are envisaged;
- clarifying that the power to issue a public warning about identified individuals should not be exercised automatically but rather only on a case by case basis and where appropriate and proportionate;
- regarding the provisions for publication of sanctions: (i) the inclusion of a requirement in both regulations to consider separately each case and its particular circumstances on the basis of necessity and proportionality prior to any decision to publish the identity of the person subject to a sanction; and (ii) specifying a maximum retention period for personal data published as part of information on sanction decisions on competent authorities' websites.

## Structural measures improving the resilience of EU credit institutions

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Opinion of the European Central Bank (ECB) on a proposal for a regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions.

The European Central Bank received a request from the European Parliament for an opinion on this proposal. Whilst welcoming the proposal, the ECB made a series of comments on the following issues:

Scope of application of the proposed rules:

The ECB stressed that in the case of a concentration of credit institutions (for example, a merger) which would immediately create a single credit institution falling within the scope of the proposed regulation, the combined figures for the credit institutions which formed the single entity, during the period of two years prior to the concentration, should be considered when the competent authority assesses whether the thresholds for the new single entity are met.

Apart from such cases, national competent authorities should review on a regular basis, and in any case at least annually, whether the threshold criteria are met.

Moreover, the Commission should assess the appropriateness of the threshold criteria in its review of the proposed regulation, e.g. to verify whether all relevant credit institutions are covered.

Prohibited trading activities, in particular proprietary trading:

The ECB generally supported that the proposed regulation prohibits proprietary trading by certain credit institutions. It also welcomed that the proposed regulation prohibits relevant credit institutions from owning or investing in hedge funds.

The ECB generally supported the definition of proprietary trading as put forward in the proposed regulation but suggested some amendments that aim to clarify the prohibited activities. In particular, the ECB suggested clarifying that there will be a prohibition on transactions relating to proprietary trading that are undertaken in reaction to and in order to exploit market valuations and with the aim of making profit, irrespective of whether a profit is in fact realised either in the short or in the longer term.

The ECB stressed that some carve-outs are implied by the Commission proposal which seem to indicate that the nature of the exempted trading activities should be further assessed in the upcoming review of the proposed regulation in order to determine the extent of the possible threat that they may pose to individual credit institutions or the global financial system.

Decision on whether or not to request separation of trading activities, in particular the treatment of market-making activities:

Although supporting the proposed regulation's approach to separation, the ECB considered it would be useful to supplement these helpful provisions by introducing more clarity to the assessment of whether a core credit institution's trading activities pose a threat to financial stability and thus require separation.

As regards increasing transparency, the ECB considered that the supervisory decision needs to be made by reference to a set of criteria broader than that contained in the proposed regulation. To this end, the metrics could usefully be complemented by additional qualitative information such as: (a) a cartography of trading activities, including methods for assessing the need to build up inventories in order to meet anticipated client demand; (b) the compliance framework implementing the proposed regulation; and (c) the compensation schemes for traders.

The metrics could be complemented by additional quantitative data such as inventory turnover, value-at-risk variations, day 1 profit and loss, limits on trading desks and geographic diversification of the trading activities.

The ECB considered it important to sufficiently preserve the market-making activities of banks in order to maintain or increase asset and market liquidity, moderate price volatility and increase security markets' resilience to shocks. This is essential for financial stability, the implementation and smooth transmission of monetary policy, and the financing of the economy. Therefore, any regulatory treatment should avoid negative consequences for market-making activities that are not justified by significant risks. With this in mind, the ECB suggested a more accurate definition of market making.

Lastly, the ECB noted that it should be noted that separation does not in itself solve the too-big-to-fail issue.

Derogation clause:

The proposed regulation provides that the Commission, at the request of a Member State, can authorise a derogation from the separation requirements for credit institutions that are covered by national legislation having an equivalent effect to the provisions of the proposed regulation. The ECB stated that the derogation is not compatible with the aim of creating a level playing field and may create a precedent for future derogations in other types of Union legislation.

Cooperation between the competent authority and the resolution authority:

Enhancing the resolvability of banks while preserving critical financial services in the economy as a whole is also a key aim of the supervisory process to which the measures in the proposed regulation should seek to give effect. Therefore, competent authorities and resolution authorities will have to work in close cooperation in both of these processes.

Sanctioning powers:

As the ECB is considered a competent authority for the exclusive purpose of carrying out the tasks conferred on it, the ECB should also have the power to exercise appropriate sanctioning powers.

It suggested aligning the level of pecuniary sanctions in the proposed regulation with Directive 2013/36/EU of the European Parliament and of the Council. Lastly, as regards the power to suspend an authorisation, the ECB suggested removing this sanction from the proposed regulation in order to avoid legal difficulties.