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| From:            | Mr Andrea Enria, Chairperson for the EBA Board of Supervisors   |
| date of receipt: | 21 July 2014  |
| To:              | Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union  |
| Subject:         | Opinion of the European Banking Authority on a structural measure notified by the French Republic pursuant to Article 395(6) of Regulation (EU) No 575/2013 |

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Delegations will find attached the above mentioned opinion.

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Encl.: [...]

EBA/Op/2014/09

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17 July 2014

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# Opinion of the European Banking Authority on a structural measure notified by the French Republic pursuant to Article 395(6) of Regulation (EU) No 575/2013

## Introduction and legal basis

1. By letters of 13 June and 8 July 2014, the French Republic notified the Presidency of the Council of the European Union, the European Commission and the European Banking Authority ("EBA") of an envisaged structural measure of banking separation to be implemented in France by the adoption of an order ("arrêté") in application of law 2013-672 of 26 July 2013 on separation and regulation of banking activities ("law 2013-672") (*loi 2013-672 du 26 Juillet 2013 de separation et regulation des activités bancaires*).
2. The notification complies with the requirement of Article 395(7) of Regulation (EU) No 575/2013<sup>1</sup>, providing that "*before adopting the specific structural measures as referred to in [article 395] paragraph 6 relating to large exposures, the competent authorities shall notify the Council, the Commission, the competent authorities concerned and EBA at least two months prior to the publication of the decision to adopt the structural measures, and submit relevant quantitative or qualitative evidence of all of the following:*

- *the scope of the activities that are subject to the structural measures;*

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<sup>1</sup> 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).

- *an explanation as to why such draft measures are deemed to be suitable, effective and proportionate to protect depositors;*
  - *an assessment of the likely positive or negative impact of the measures on the internal market based on information which is available to the Member State."*
3. The notification received by the EBA included (i) a Note describing the content of the draft order implementing law 2013-672 of 26 July 2013 ("Note"); (ii) law 2013-672 and (iii) the draft order implementing law 2013-672 of 26 July 2013 ("draft order").
  4. The notification was acknowledged by the EBA Chairperson by letter dated 30 June, where the possibility to provide further information on the suitability, effectiveness and proportionality of the proposed structural measures was also offered to the consulting Member State. Subsequently, by letter of 3 July 2014, the French Republic provided the EBA with additional information supporting the Note.
  5. By letter of 8 July 2014, the French Republic provided an update on the Note and the draft order taking into account the results of the consultation of the Autorité de Contrôle Prudentiel et de Résolution ("ACPR"), the Autorité des Marchés Financiers and the Comité consultatif pour la législation et la réglementation financières.
  6. The Note outlines that law 2013-672, which entered into force on 1 July 2014, introduces new obligations on credit institutions with a view to restricting the exercise of speculative activities and to providing banking and market supervisory authorities with new control powers. Law 2013-672 also empowers the Ministry of economics and finance ("MEF"), after consulting the ACPR, to restrict the size of speculative activities which would pose a risk to financial stability. Law 2013-672 in particular provides that credit institutions have to segregate their proprietary trading activities in a dedicated subsidiary.
  7. In compliance with law 2013-672, the draft order aims at implementing such segregation of activities. In particular, Article 8 of the draft order states that when proprietary trading activities are segregated in a dedicated subsidiary, the group's large exposure limit to this segregated entity shall be reduced to 15% of eligible capital until 30 June 2015 and to 10% of eligible capital as of 1 July 2015.
  8. Such modification of the large exposure regime falls within the notion of structural measure pursuant to Article 395(6) of Regulation (EU) No 575/2013, according to which "*structural measures mean measures adopted by a Member State and implemented by relevant competent authorities of that Member State before the entry into force of a legal act explicitly harmonising such measures, that require credit institutions authorised in that Member State to reduce their exposures to different legal entities depending on their activities, irrespective of where those activities are located, with a view to protecting depositors and preserving financial stability*".

9. The EBA competence to deliver an opinion is based on Article 34(1) of Regulation (EU) N° 1093/2010<sup>2</sup> and Article 395(8) of Regulation (EU) No 575/2013 which provides that “*Within one month of receiving the notification referred to in paragraph 7, EBA shall provide its opinion on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned. Competent authorities concerned may also provide their opinions on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned.*”
10. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors<sup>3</sup>, the Board of Supervisors has adopted this opinion.

## General comments

11. In its Opinion of 11 December 2012 on the recommendations of the High-level Expert Group on reforming the structure of the EU banking sector<sup>4</sup>, the EBA drew attention to the need to ensure consistency across the Internal Market as regards structural measures in order to foster the level playing field and avoid regulatory arbitrage. The EBA in particular emphasised the risk that the development of structural measures at national level could ultimately support the ring-fencing of national credit institutions thus contributing to the segmentation of the internal market.
12. The purpose of the French legal framework on structural measures laid down in law 2013-672 and in the implementing draft order relating to the limitation of the exposures between a segregated entity engaged in proprietary trading and the other group entities, is the reduction of the group risk profile. The EBA notes that such measure does not aim at ring-fencing institutions alongside their national borders but rather at restricting proprietary trading activities, regardless of their geographical location. On the basis of the information received, the EBA does not have reason to believe that the measure itself is inconsistent with the general principles governing the internal market or would be likely to have a negative impact on the internal market.
13. However, the EBA would like to remind the consulting Member State of the need to comply with the Union legal framework on structural separation once the *Proposal for a regulation on structural measures improving the resilience of EU credit institutions* submitted by the Commission on 29 January 2014<sup>5</sup> is adopted and enters into force.

<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>3</sup> Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 11 December 2013 (Decision EBA DC 001 (Rev3)).

<sup>4</sup> [EBA Op 2012 07].

<sup>5</sup> COM(2014) 43 final.

## Specific comments

14. The EBA takes the opportunity to provide some specific comments on the draft order.

15. Firstly, with specific regard to the requirement of Article 395(6) of Regulation (EU) No 575/2013, that the consulting Member State submit quantitative or qualitative evidence of the scope of activities that are subject to the structural measures, the EBA welcomes that the Note clarifies that institutions supervised on a consolidated basis in France which have more than 7.5% of their balance sheet assets on fair value through profit and losses will be required to segregate their proprietary trading activities in dedicated subsidiaries. According to law 2013-672, proprietary trading excludes investment services provided to customers, clearing of financial instruments, hedging, market making, sound and prudent cash management and group investments. As already mentioned in the General Comments section of this Opinion, such definition should be aligned with possible further Union legal framework on structural separation.

16. Secondly, consulting Member States are also required to submit relevant quantitative or qualitative evidence explaining why such draft measures are deemed to be suitable, effective and proportionate to protect depositors. The EBA welcomes that the Note supports the suitability of the measure on grounds that it will reduce the risk exposure of the parent company by limiting its exposure to this dedicated subsidiary to 10% of eligible capital. In the meantime, such activities are maintained in the scope of banking supervision rather than being externalised to the shadow banking sector.

17. Moreover, the consulting Member State underlines that the size of speculative activities, which represented an average of 15% of French banking groups' net banking profit (NBP) in 2006 (and 15% to 20% of the NBP of major French banking group investment banking activities) has significantly reduced to an average of 3% to 5% of the NBP. In order to prevent a new rise of such activities that could endanger the solvability of a banking group and its depositors in general, this set of structural measures establishes limitations to their funding from within a single banking group. These elements provide satisfactory quantitative evidence to the EBA as regards the suitability, effectiveness and proportionality of the measure as regards the protection of depositors.

18. Finally, the consulting Member State has to provide relevant quantitative or qualitative evidence to assess the likely positive or negative impact of the measures on the internal market based on information which is available to the Member State. The EBA welcomes that the Consulting Member State considers that the increased monitoring of market activities implied by the draft order will reduce risks carried by large banking groups with significant proprietary trading activities and will increase financial stability in general. Moreover, according to the Consulting Member State, such effect would have a positive impact on the internal market since the banking groups involved have a stake in several Member States. Lastly, the Consulting Member State remarks that this measure would not discriminate against



other Member States since it aims at a specific type of activities considered more dangerous, regardless of its geographical location.

19. Considering all elements provided by the French Republic on 13 June, 3 July and 8 July 2014 and following a careful assessment of the structural measures set by the draft order implementing the law of 26 July 2013, the EBA has no specific objection to raise to the Council, the Commission and the French Republic.

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

Done at London, 17 July 2014

[signed]

Andrea Enria

Chairperson

For the Board of Supervisors

Annexes :

- Letter from the French Republic dated 13 June 2014
- Letter from the French Republic dated 3 July 2014
- Letter from the French Republic dated 8 July 2014