

## I

*(Resolutions, recommendations and opinions)*

## RECOMMENDATIONS

## EUROPEAN CENTRAL BANK

## RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 17 December 2015

on dividend distribution policies

(ECB/2015/49)

(2015/C 438/01)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34 thereof,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions<sup>(1)</sup>, and in particular Article 4(3) thereof,

Having regard to Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17)<sup>(2)</sup>,

Whereas:

Credit institutions need to continue preparing for a timely and full application of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>(3)</sup> and Directive 2013/36/EU of the European Parliament and of the Council<sup>(4)</sup> in a challenging macroeconomic and financial environment, which exerts pressure on credit institutions' profitability and, as a result, on their capacity to build up their capital bases. Moreover, while credit institutions need to finance the economy, a conservative distribution policy is part of an adequate risk management and sound banking system. The same method that was set out in Recommendation ECB/2015/2 of the European Central Bank<sup>(5)</sup> should be applied,

HAS ADOPTED THIS RECOMMENDATION:

## I.

1. Credit institutions should establish dividend policies using conservative and prudent assumptions in order, after any distribution, to satisfy the applicable capital requirements.

(a) Credit institutions are required to satisfy the applicable minimum capital requirements ('Pillar 1 requirements') at all times. This includes a Common Equity Tier 1 capital ratio of 4,5 %, a Tier 1 capital ratio of 6 % and a total capital ratio of 8 % as provided for by Article 92 of Regulation (EU) No 575/2013.

<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> OJ L 141, 14.5.2014, p. 1.

<sup>(3)</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).

<sup>(4)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(5)</sup> Recommendation ECB/2015/2 of the European Central Bank of 28 January 2015 on dividend distribution policies (OJ C 51, 13.2.2015, p. 1).

- (b) Moreover, credit institutions are required to satisfy at all times the capital requirements that are imposed as a result of the applicable Decision on the Supervisory Review and Evaluation Process in application of Article 16(2)(a) of Regulation (EU) No 1024/2013 and which go beyond the Pillar 1 requirements ('Pillar 2 requirements').
- (c) Credit institutions are also required to satisfy the countercyclical capital and systemic buffers as referred to in Article 128(2), (3), (4) and (5) of Directive 2013/36/EU, and all other buffers adopted by national competent and designated authorities.
- (d) Credit institutions are also required to satisfy their required 'fully loaded'<sup>(1)</sup> Common Equity Tier 1 capital ratio, their Tier 1 capital ratio and their total capital ratio by the applicable full phase-in date. This refers to the full application of the abovementioned ratios after application of the transitional provisions, as well as that of the countercyclical capital buffer and the systemic buffers referred to in Article 128(2), (3), (4) and (5) of Directive 2013/36/EU, and all other buffers adopted by national competent and designated authorities. The transitional provisions are set out in Title XI of Directive 2013/36/EU and in Part Ten of Regulation (EU) No 575/2013.

These requirements are to be met both on a consolidated level and on an individual basis unless the application of prudential requirements has been waived on an individual basis, as provided for in Articles 7 and 10 of Regulation (EU) No 575/2013.

## 2. With regard to credit institutions paying dividends<sup>(2)</sup> in 2016 for the financial year 2015, the ECB recommends that:

- (a) **Category 1:** Credit institutions that satisfy the applicable capital requirements as referred to in paragraph 1(a), (b) and (c), and which have already reached their fully loaded ratios as referred to in paragraph 1(d) as at 31 December 2015, should distribute their net profits in dividends in a conservative manner to enable them to continue to fulfil all requirements even in the case of deteriorated economic and financial conditions;
- (b) **Category 2:** Credit institutions that satisfy the applicable capital requirements as referred to in paragraph 1(a), (b) and (c) as at 31 December 2015 but have not reached their fully loaded ratios as referred to paragraph 1(d) as at 31 December 2015 should distribute their net profits in dividends in a conservative manner to enable them to continue to fulfil all requirements, even in the case of deteriorated economic and financial conditions. In addition, they should in principle only pay-out dividends to the extent that, at a minimum, a linear<sup>(3)</sup> path towards the required fully loaded capital requirements as referred to in paragraph 1(d) is secured;
- (c) **Category 3:** Credit institutions in breach of the requirements referred to in paragraph 1(a), (b) or (c) should in principle not distribute any dividend.

Credit institutions that are not able to comply with this Recommendation because they consider themselves to be legally required to pay-out dividends should immediately contact their joint supervisory team.

## II.

This Recommendation is addressed to significant supervised entities and significant supervised groups as defined in Article 2(16) and (22) of Regulation (EU) No 468/2014 (ECB/2014/17).

## III.

This Recommendation is also addressed to the national competent authorities and designated authorities with regard to less significant supervised entities and less significant supervised groups as defined in Article 2(7) and (23) of Regulation (EU)

<sup>(1)</sup> All buffers at fully loaded levels except the capital conservation buffer, which would for methodological reasons be fixed at the 2016 phase-in level for the fully loaded calculations.

<sup>(2)</sup> Credit institutions may have various legal forms, e.g. listed companies and non-joint stock companies such as mutuals, cooperatives or savings institutions. The term 'dividend' as used in this recommendation refers to any type of cash pay-out that is subject to the approval of the General Assembly.

<sup>(3)</sup> In practice, this means that over a period of four years starting on 31 December 2014, credit institutions should in principle retain at least 25 % per year of the gap towards their fully loaded Common Equity Tier 1 capital ratio, their Tier 1 capital ratio and their total capital ratio, as referred to in paragraph 1(d).

No 468/2014 (ECB/2014/17). The national competent and designated authorities are expected to apply this Recommendation to such entities and groups, as deemed appropriate (¹).

Done at Frankfurt am Main, 17 December 2015.

*The President of the ECB*

Mario DRAGHI

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(¹) If the recommendation is applied to less significant supervised entities and less significant supervised groups that believe themselves unable to comply because they understand themselves to be legally required to pay-out dividends, they should immediately contact their national competent authorities.