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(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 13 December 2016

on dividend distribution policies

(ECB/2016/44)

(2016/C 481/01)

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⁽¹⁾, 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)⁽²⁾,

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⁽³⁾ and Directive 2013/36/EU of the European Parliament and of the Council⁽⁴⁾ 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/2015/49 of the European Central Bank⁽⁵⁾ 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 and the outcomes of the supervisory review and evaluation process (SREP).
 - (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.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 141, 14.5.2014, p. 1.

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ Recommendation ECB/2015/49 of the European Central Bank of 17 December 2015 on dividend distribution policies (OJ C 438, 30.12.2015, p. 1).

- (b) Moreover, credit institutions are required to satisfy at all times the capital requirements that are imposed by the decision following the SREP 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 combined buffer requirement as defined in Article 128(6) of Directive 2013/36/EU.
- (d) Credit institutions are also required to satisfy their 'fully loaded' ⁽¹⁾ 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 and the combined buffer requirement as defined in Article 128(6) of Directive 2013/36/EU. 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 ⁽²⁾ in 2017 for the financial year 2016, the ECB recommends that:

- (a) Category 1: Credit institutions that (i) satisfy the applicable capital requirements as referred to in paragraph 1(a), (b) and (c), and (ii) have already reached their fully loaded ratios as referred to in paragraph 1(d) as at 31 December 2016 should distribute their net profits in dividends in a conservative manner to enable them to continue to fulfil all requirements and outcomes of the SREP 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 2016, but have not reached their fully loaded ratios as referred to in paragraph 1(d) as at 31 December 2016 should distribute their net profits in dividends in a conservative manner to enable them to continue to fulfil all requirements and outcomes of the SREP, 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 ⁽³⁾ path towards the required fully loaded capital requirements as referred to in paragraph 1(d) and outcomes of the SREP 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 legally required to pay out dividends should immediately contact their joint supervisory team.

Credit institutions in categories 1, 2, and 3 as referred to in paragraph 2(a), (b) and (c) are also expected to meet Pillar 2 guidance. All other things being equal, the capital demand ⁽⁴⁾ can be expected to remain broadly stable. If a credit institution operates or expects to operate below Pillar 2 guidance, it should immediately contact its joint supervisory team. The ECB will review the reasons why the credit institution's capital level has fallen, or is expected to fall, and will consider taking appropriate and proportionate institution-specific measures.

II.

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

⁽¹⁾ All buffers at fully loaded levels.

⁽²⁾ 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.

⁽³⁾ 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).

⁽⁴⁾ Capital demand means pillar 1 plus pillar 2 requirements, plus the capital conservation buffer, plus pillar 2 guidance. Irrespective of the phasing-in of the capital conservation buffer, credit institutions should also expect to have positive pillar 2 guidance in the future.

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 points (7) and (23) of Article 2 of Regulation (EU) 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, 13 December 2016.

The President of the ECB

Mario DRAGHI

⁽¹⁾ If this Recommendation is applied to less significant supervised entities and less significant supervised groups that consider themselves unable to comply because they regard themselves legally required to pay out dividends, they should immediately contact their national competent authorities.