



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

## Feedback statement

Response to the public  
consultation on the approach for  
the recognition of institutional  
protection schemes (IPS) for  
prudential purposes

BANKENTOEZICHT

July 2016

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This document is intended to give an overview of the comments received during the public consultation on the approach for the recognition of institutional protection schemes (IPSs) for prudential purposes and provide an assessment of those comments. It also explains the amendments made to the draft specifications for the assessment under Article 113(7) of the CRR as a result of the public consultation.

# 1 Overview and analysis of responses

On 19 February 2016 the European Central Bank launched a public consultation on the approach to the recognition of institutional protection schemes (IPs) for prudential purposes. The public consultation ended on 15 April 2016. In addition to soliciting written comments, the ECB gave also industry participants and interested parties an opportunity to provide additional input at a public hearing with senior representatives of the ECB. This event was held in Frankfurt on 31 March 2016. Although the comments provided during the public hearing are not reflected in the figures shown in the table below, they have nonetheless been taken into account. In addition, most (if not all) of the comments submitted at the public hearing have also been reiterated through the written submissions. The ECB has given due consideration to all the comments received during the consultation period.

This feedback statement presents an overall assessment of the comments received in the public consultation and aims to address the most relevant issues raised by them. Amendments to the specifications for the assessment under Article 113(7) of the CRR have been made as a result of the comments received.

In total, ECB Banking Supervision received 11 responses. Contributions were submitted by credit and financial institutions, market and banking associations, consultancies and other firms from euro area and non-euro area Member States, showing a broad participation by the relevant stakeholders. Table 1 shows the breakdown of the responses to the public consultation according to the category of respondent.

Table 1

Category	Number of respondents	Percentage
Credit and financial institutions	2	18%
Market and banking associations	7	64%
Consultancies	1	9%
Other	1	9%
Total contributions	11	100%

Once the revised version of the specifications for the assessment under Article 113(7) of the CRR have been approved by the Supervisory Board and the Governing Council, the ECB Guide on Options and Discretions will be amended to incorporate the approach for the recognition of IPs for prudential purposes.

At the end of this process, the ECB will publish a consolidated version of the Guide to take into account the IPS consultation and the amendments to the first version deriving from the public consultation on a draft Addendum to the ECB Guide on options and discretions available in Union law, carried out between May and June 2016.

## 2 General comments on the approach for the recognition of institutional protection schemes (IPS) for prudential purposes

### 2.1 Intervention by the IPS

A number of respondents expressed their views on when the IPS is required to intervene. In the introduction to the consultation document it is specified that “intervention by the IPS is deemed to be triggered where, taking the institution’s recovery plan and other relevant circumstances into account, there is no reasonable prospect that any alternative private sector measures, including in particular the recovery measures provided for in the plan, would prevent the failure of that institution”. Several respondents stressed that intervention by the IPS would occur much earlier and that the IPS will, on the basis of its tools and systems for the monitoring and classification of risk, exert influence on its member institutions.

Preventive actions by an IPS are important for it to function effectively. This understanding is supported by the fact that one of the conditions set out in Article 113(7) of the CRR is the need for the IPS to have at its disposal suitable and uniformly stipulated systems for the monitoring and classification of risk. These should provide a complete overview of the risk situation of all the individual members and the IPS as a whole, with corresponding possibilities to exert influence. The introduction to the document on the ECB’s approach for the recognition of IPSs for prudential purposes does not intend to de-emphasize the importance of preventive actions by IPSs.

With regard to recovery or resolution measures in accordance with the Bank Recovery and Resolution Directive (BRRD), the ECB is of the view that measures need to be taken by the IPS while its member institution is still in a going concern situation ahead of a potential resolution or liquidation. This is in line with Article 32(1)(b) of the BRRD, according to which one of the conditions for resolution is that, with regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe. This also implies that a credit institution’s membership of an institutional protection scheme does not exclude the possibility that the institution may nevertheless enter into resolution. However, the IPS should take all efforts to fulfil its purpose and to prevent the failure of its member institutions.

## 2.2 Interaction with requirements for deposit guarantee schemes

As IPSs may be recognised as deposit guarantee schemes (DGSs) some respondents asked for clarification of the interaction between the conditions of the CRR for the recognition of IPSs for prudential purposes and the conditions according to the DGS Directive<sup>1</sup>. They also asked for consistency between the specifications for the assessment under Article 113(7) of the CRR and the requirements for deposit guarantee schemes.

The ECB is not competent for the recognition of IPS as DGSs and is not involved in supervising them. In line with its competencies, the ECB mainly focuses on the requirements for the supervisory assessment of the conditions laid down in Article 113(7) of the CRR. It should also be borne in mind that not all IPSs are or will be recognised as DGSs. Therefore it is not possible to include any references to the requirements laid down in the DGS Directive in the specifications. Nevertheless, and in particular with regard to the conditions set out in Article 113(7)(b) of the CRR on the ability of an IPS to grant support from funds readily available to it, the specifications have been modified to take account of the fact that IPSs may be recognised as DGS.

## 2.3 Proportionality

A general comment was provided on the ECB's aim to ensure coherence and effectiveness regarding the policy that will be applied when assessing IPSs in accordance with the CRR. This wording could give the impression that the principle of proportionality is secondary to the primary aim of consistency. Since IPSs can be made up of small and medium-sized credit institutions the principle of proportionality needs to be fully incorporated into the approach for the recognition of IPSs for prudential purposes.

The specifications that have been published for consultation provide a common framework that will be applied for the assessment of applications according to Article 113(7) of the CRR. Nevertheless, the final decision by the ECB to grant the permission will be taken case by case and will be based on a holistic analysis including all aspects covered by the CRR conditions and additional information stemming from the ongoing supervision of the credit institutions that are members of the IPS. The particular features of the IPS concerned will be taken into account and proportionality will be ensured.

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<sup>1</sup> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149–178)

## 2.4 Impact on existing IPSs

Against the backdrop that the specifications for the assessment under Article 113(7) of the CRR have been prepared with potential new applications from institutions belonging to IPSs in mind, several respondents asked for further clarification as to when a reassessment of existing IPSs may be considered by the ECB.

Existing IPSs that have already been granted the permission according to Article 113(7) of the CRR and that have significant institutions as members will be subject to ongoing monitoring by the ECB, as required by the CRR. The main focus of the ongoing monitoring will be the adequacy of the IPSs' systems for the monitoring and classification of risk and for the conduct of their risk review; however, the monitoring will also cover ongoing compliance with the conditions set out in Article 113(7) of the CRR. In the event of structural changes to an IPS or incidents that may give rise to doubts regarding its compliance with the CRR conditions, a reassessment can be considered. This decision will be taken on a case-by-case basis and it is therefore not possible to provide an exhaustive list of events that could lead to a reassessment.

### 3 Comments on the specifications for the assessment under Article 113(7) CRR

#### 3.1 Material practical or legal impediment to the prompt transfer of funds or repayment of liabilities (Article 113(7)(a) taken in conjunction with Article 113(6)(e) of the CRR)

Several respondents argued that the specifications developed for assessing compliance with the requirements of Article 7(1) of the CRR on the waiver for a subsidiary with regard to potential material practical or legal impediments to the prompt transfer of funds or repayment of liabilities should not be applied for the assessment of IPSs and would imply an excessive tightening of the conditions set out in Article 113(7) of the CRR.

The specifications have been redrafted to avoid the impression that the ECB will apply the same requirements for IPSs and their member institutions as for consolidated banking groups that are applying for a waiver according to Article 7(1) of the CRR. The reference to the specifications developed for assessing compliance with the requirements of Article 7(1) of the CRR has been deleted and the redrafted specifications take account of the specific features of IPSs.

#### 3.2 IPS arrangements which ensure that the IPS is able to grant the support it has committed to provide from funds readily available to it (Article 113(7)(b) of the CRR)

Several respondents stressed that there should be no unconditional obligation for the IPS to provide support to its members as this would create a significant problem of moral hazard. Rather, the IPS should have an adequate legal framework and governance structure to be able to grant the support necessary under its commitment. The IPS as a system of corresponding rights, commitments and obligations should have the possibility to impose conditions on its members for the granting of support. Regarding the specification that the IPS should ensure that its member institutions permanently abide by the regulatory own funds and liquidity requirements, several respondents stressed that an explicit requirement for the IPS to guarantee that regulatory own funds and liquidity requirements are observed by its members is going too far.

The ECB agrees that a legal obligation for the IPS to provide support is not envisaged by the CRR. Furthermore, the ECB is of the view that support measures may be linked to specific conditions imposed by the IPS to ensure that the root causes that caused the financial difficulties of the member institution are adequately addressed. This is also in line with the conditions of Article 113(7)(c) of the CRR,

according to which the IPS should have the possibility to influence the risk situation of its member institutions. The possibility to impose conditions or any other limitations to support measures should be clearly defined in the contractual or statutory agreement regulating the IPS. The specifications have been redrafted to clarify both aspects. Nevertheless, to be recognised for prudential purposes the IPS needs to fulfil its purpose to protect its members. The ECB is of the view that refusal by the IPS to provide support measures should be an absolute exception and will assess these cases very carefully in order to verify whether the IPS is fulfilling its purpose, under its commitment, to prevent the failure of its members.

With respect to the regulatory own funds and liquidity requirements there should be a clear commitment by the IPS to intervene when a member institution does not comply with the minimum regulatory requirements and when this non-compliance is not of a short temporary nature only.

A number of comments were provided with regard to the establishment of an ex ante fund and the conduct of stress tests. These comments were mainly related to the interaction between the conditions of the CRR for the recognition of IPSs for prudential purposes and the conditions stemming from the DGS Directive. One respondent expressed the view that the specification that funds should not be held within a consolidated entity seems to be overly strict.

Regarding the interaction between CRR conditions for the recognition of IPSs for prudential purposes and the requirements stemming from the DGS Directive that have to be fulfilled by IPSs that are recognised as DGSs, it needs to be stressed that the specifications for the assessment under Article 113(7) of the CRR have been developed for all IPSs. A reference to the requirements set out in the DGS Directive is legally not possible as these requirements cannot be extended to IPSs that are not recognised as DGSs. Nevertheless, the ECB agrees that consistency between the different frameworks needs to be ensured to the extent possible. That means, for example, that the ECB will consider whether an IPS already carries out stress tests as required by the DGS Directive when assessing its compliance with the conditions set out in Article 113(7)(b) of the CRR. As the DGS Directive requires that DGSs perform stress tests on their systems only every three years the specification that the IPS should carry out stress tests at least yearly has been deleted. Depending on the specific situation of an IPS the ECB may nevertheless consider a higher frequency than every three years as being necessary. The same approach will be followed for the assessment of the available ex ante funds for IPS support measures. The ECB will consider for its assessment the available financial means of any IPS that is recognised as a DGS and that is allowed to use its available financial means for alternative measures in order to prevent the failure of a credit institution. In this context the ECB will consider the different purposes of an IPS, which aims to protect its members, and a DGS, whose key task is to protect depositors against the consequences of the insolvency of a credit institution.

Regarding the specification that the funds should be only invested in liquid and secure assets that may be liquidated at any time and whose value does not depend on the solvency and liquidity position of the members of the IPS and their subsidiaries, the ECB considers that investments of funds within IPS members would



lead to the risk of these funds not being readily available for potential support measures.

### 3.3 IPS systems for the monitoring and classification of risk (Article 113(7)(c) of the CRR)

Several respondents raised concerns that the specifications regarding the IPSs' system for the monitoring and classification of risk interfere with the autonomy of IPS member institutions and the responsibility of the credit institution's senior management for risk management.

According to the CRR the IPS must have at its disposal suitable and uniformly stipulated systems for the monitoring and classification of risk, which give a complete overview on the risk situation of all the individual members and of the IPS as a whole, with corresponding possibilities to intervene. The specifications refer to these systems of the IPS and do not imply that the IPS should assume responsibility for the risk management of its individual member institutions. The IPS needs to have comparable information at its disposal on the risks to which its members are subject in order to be able to assess the risk situation of the individual members and of the IPS as a whole. Therefore the ECB is of the view that the indicators that are reported to the IPS need to be calculated in a harmonised way and on the basis of uniform definitions. The specifications have been redrafted to avoid a potential misinterpretation.

### 3.4 IPS risk review which is communicated to the individual IPS members

With regard to the condition that the IPS conducts its own risk review which is communicated to its members two respondents asked for clarification of the level of detail of the information that should be provided to the IPS members and raised concerns regarding the distribution of highly sensitive information.

The conduct of own risk reviews by the IPS and the communication of these reviews to individual IPS members is a condition set out in the CRR. The ECB is of the view that it is important for the member institutions to be aware of the overall risk situation of the IPS as a whole. Having in mind the different set-up of IPSs, including the high number of member institutions of some IPSs, the specifications have been redrafted. The possibility to communicate the results of the IPS risk review to the decision-making bodies of the IPS (on which its members are represented) instead of sharing them with all individual members has been included as an option.

### 3.5 Assessment that the IPS is based on a broad membership of credit institutions of a predominantly homogeneous business profile

With regard to the condition that IPS members need to share a predominantly homogeneous business profile some respondents asked for further clarification on how the ECB will assess this condition. Other respondents emphasised the need to take into account the structure of the IPS concerned and ensure that the homogeneity criteria will be interpreted in a sufficiently flexible way.

The ECB is of the view that it is not possible to further specify the homogeneity criteria, beyond the specification provided in the consultation document. With regard to the business activities of central institutions or specialised institutions it is already specified that the fact that IPS networks are often based on cooperation does not lead per se to the conclusion that the IPS members do not share a homogeneous business model. The assessment will be performed on a case-by-case basis considering the composition of the IPS concerned.

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