

PUBLIC CONSULTATION

DRAFT ECB REGULATION CONCERNING REPORTING ON SUPERVISORY FINANCIAL
INFORMATION

TEMPLATE FOR COMMENTS

Institution/Company	
Bundesverband der Wertpapierfirmen e.V. (Federal Association of Securities Trading Firms)	
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Please separate your comments per issue, citing the relevant article of the draft Regulation concerning reporting on supervisory financial information where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 3.

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TEMPLATE FOR COMMENTS

Name of Institution/Company	Bundesverband der Wertpapierfirmen e.V.	Country	Germany
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COMMENTS ON THE DRAFT ECB REGULATION CONCERNING REPORTING ON SUPERVISORY FINANCIAL INFORMATION

Issue	Article	Comment	Concise statement why your comment should be taken on board
Scope of application	Article 1(1) in connection with Article 2 (1)	Clarification	<p>Article 1 (1) of the draft ECB Regulation concerning reporting on supervisory financial information defines the addressees which shall be obliged to report supervisory financial information to NCAs. According to Article 2 (1) of the draft Regulation, the definitions used for this purpose should be identical to those used in Regulation (EU) No 468/2014 (SSM-Framework Regulation). In this context – as before in the course of consultation of the ECB Regulation on supervisory fees – an ambiguity within the SSM-Framework Regulation with respect to the scope of the definition of a “supervised entity” and in particular the inclusion of <i>financial holding companies</i> and <i>mixed financial holding companies</i> needs to be addressed:</p> <p>Regulation (EU) No 468/2014 itself is based upon and any provisions within it are limited by</p>



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		<p>Regulation (EU) No 1024/2013 (SSM Regulation) which confers “<i>specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions</i>”. These tasks are laid down in detail in Article 4 of Regulation (EU) No 1024/2013 which defines and limits the supervisory power of the ECB. As it becomes clear from the title of the regulation and the wording of Article 4, the supervisory power of the ECB is limited to “<i>prudential supervisory purposes</i>” “<i>in relation to all <u>credit institutions</u> established in the participating Member States</i>”.</p> <p>Article 4(g) of Regulation (EU) No 1024/2013 also authorizes the ECB “<i>to carry out supervision on a consolidated basis over credit institutions’ parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies [...]</i>”.</p> <p>However, this authorization is clearly restricted to the supervision of <i>financial holding companies</i> and <i>mixed financial holding companies</i> <u>in their capacity of “credit institutions’ parents”</u> an does not apply to financial holding companies and mixed financial holding companies without credit institutions among the companies which constitute the group. Unfortunately, Article 2 point 20 of Regulation (EU) No 468/2014 which defines “<i>supervised entities</i>” does not mention this restriction which directly results from Article 4(g) of Regulation (EU) No 1024/2013..</p> <p>“Financial Holding Companies”</p> <p>According to Article 4 (1) point 20 of Regulation (EU) No 575/2013 (CRR, to which Article 2(4) of Regulation (EU) No 1024/2013 refers) a “<i>financial holding company</i>” “<i>means a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company</i>”. Since “<i>Institution</i>” is defined in Article 4 (1) point 3 of Regulation (EU) No 575/2013 as “<i>a <u>credit institution</u> or an <u>investment firm</u></i>” it becomes evident that a financial holding</p>
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		<p>company not necessarily has one or more credit institutions among its subsidiaries but can be constituted by subsidiaries qualifying as investment firms as well.</p> <p>Here, we have to amend our preliminary assessment given in the course of the ECB hearing held on 13 November 2014. While originally, the definition of a “<i>financial holding company</i>” stipulated by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions. While Article 1 (21) Directive 2000/12/EC required a group to enclose at least one “<i>credit institution</i>” to qualify as a “<i>financial holding company</i>” this definition has changed in the meantime. Accordingly, Article 4(1) point 20 of Regulation (EU) No 575/2013 in connection with Article 4(1) point 3 of Regulation (EU) No 575/2013 allows a “<i>financial holding company</i>” to be constituted without a “<i>credit institution</i>” being a part of the group.</p> <p>Since Article 2 point 20(b) of Regulation (EU) No 468/2014 extends the scope of “<i>supervised entities</i>” to “<i>financial holding companies</i>” in an indistinctive way, while Regulation (EU) No 1024/2013 transfers supervisory powers to the ECB only with respect to “<i>credit institutions</i>”, a clarification is needed, that “<i>financial holding companies</i>” which do not enclose at least one “<i>credit institution</i>”, lie outside the scope of Article 1 (1) of the draft ECB Regulation concerning reporting on supervisory financial information because such entities are not covered by the authorisation of the ECB stipulated Article 4 of Regulation (EU) No 1024/2013.</p> <p>“Mixed Financial Holding Companies”</p> <p>Also a “<i>mixed financial holding company</i>” which is defined in Article 2(15) of Directive 2002/87/EC (to which Article 2(5) of Regulation (EU) No 1024/2013 refers) as “<i>a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the Community, and other entities, constitutes a financial conglomerate</i>”, can be constituted without containing a credit institution.</p>
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			<p>This circumstance results from the definition of a “<i>regulated entity</i>” in Article 2(4) of Directive 2002/87/EC, which can be either “<i>a <u>credit institution, an insurance undertaking or an investment firm</u></i>”.</p> <p>According to Article 2 (20) (c) of Regulation (EU) No 468/2014, a “<i>mixed financial holding company</i>” would also qualify as a “<i>supervised entity</i>”, “<i>provided that it fulfils the conditions laid in point (21) (b)</i>” of Article 2 Regulation (EU) No 468/2014.</p> <p>However, since Article 2 (21) (b) of Regulation (EU) No 468/2014 refers to a “<i>group</i>” and the definition of “<i>group</i>” in Article 2 (5) of Regulation (EU) No 468/2014 is limited to “<i>a group of undertakings of which <u>at least one is a credit institution</u></i>”, one could argue that the ambiguity described above in the context of “<i>financial holding companies</i>” does not exist in the case of “<i>mixed financial holding companies</i>”. Nevertheless, since the system of multi level (back) references across different regulations is highly complex and might become somewhat confusing, a clarification on the conditionality of the inclusion of “<i>mixed financial holding companies</i>” into the scope of “<i>supervised entities</i>” would be extremely helpful as well.</p> <p>Therefore, in order to avoid any misunderstanding or even the impression of an undue expansion of the scope of the definition of a “<i>supervised entity</i>” (as it could be the case at least with respect to Article 2 point 20(b) of Regulation (EU) No 468/2014), it appears desirable and necessary to provide a clarification that “<i>financial holding companies</i>” and “<i>mixed financial holding companies</i>” qualify as a “<i>supervised entity</i>” – and therefore would be subject to the provisions stipulated in the ECB Regulation on reporting of supervisory financial information – only under the constrictive condition that the holding contains at least one credit institution.</p> <p>Aside from the requested clarification regarding the scope of the definition of “<i>supervised entity</i>” within the Regulation on reporting of supervisory financial information, we strongly urge the ECB to consider an Amendment to Article 2 Point 20 of Regulation (EU) No 468/2014 in order to</p>
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			avoid an otherwise recurring and perpetuating ambiguity. At a minimum, Article 2 Point 20 (b) of Regulation (EU) No 468/2014 should clearly require a “ <i>financial holding company</i> ” to enclose at least one “ <i>credit institution</i> ” within the group, in order to qualify as a “ <i>supervised entity</i> ”.
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