



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

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Definition of credit institution

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What is a bank?



Article 3(1), point 1 of the CRD4:

'credit institution means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013 (CRR)

Article 4(1), point (1) of the CRR:

'credit institution' means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account

Authorisation of credit institutions

Article 8(1) of the CRD4:

Member States shall require credit institutions to obtain authorisation before commencing their activities. [...]

Article 9 of the CRD4:

1. Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.



Elements of the definition of credit institution (1)

An undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account

➤ **Undertaking:**

- Neutral concept
- Entity engaged in an economic activity
- Can be a natural or legal person or an association of persons
- Can include public entities



Elements of the definition of credit institution (2)

An undertaking **the business of which is** to take deposits or other repayable funds from the public and to grant credits **for its own account**

➤ **Business:**

- Focus on actual business undertaken, not on goals or intentions (regardless of what is stated in the articles of association)
- A 'person', either natural or legal
- Purely incidental activities are exempted



➤ **Own account:**

- Must be its own business, not an intermediary or 'agent'
- Banking business affects the books of the undertaking; the deposits/loans become assets/liabilities of the credit institution



Elements of the definition of credit institution (3)

An undertaking the business of which is **to take deposits** or other repayable funds from the public and to grant credits for its own account

➤ Deposit:

- A sum of money (e.g. credit balance on an bank account,
- repayable on demand or at an agreed point in time (but otherwise unconditional),
- with or without interest,
- received from third parties in the course of carrying on the activity by way of business.
- *Link to definition of 'deposits' in DGD?*



Elements of the definition of credit institution (4)

*An undertaking the business of which is **to take** deposits or **other repayable funds** from the public and to grant credits for its own account*

➤ **Other repayable funds:**

- Interpreted broadly (ECJ: refers also to all financial instruments which are the subject of a contractual agreement to repay the funds)
- Any debt evidenced by a certificate issued by a bank, indifferent how and under what title the funds were received (e.g. bonds/other securities)
- Excluded are funds related to specific services (casino chips, paper vouchers, funds for onward payment to a third party)



Elements of the definition of credit institution (5)

*An undertaking the business of which is to take deposits or other repayable funds **from the public** and to grant credits for its own account*

➤ **Public**

- No definition, but usually intended to protect “weaker” parties from entrusting funds to unsupervised entities
- Specific groups that are deemed not to need such protection may hence be exempted from the term “public”.
- National laws often exclude “professional parties” from the term “public”
- *Draft ECB policy: broadly considered as exempted from ‘public’ are: credit institutions, investment firms, insurers, UCITS, financial institutions, connected undertakings*
- *How about public authorities/public sector entities, large corporate entities and pension funds?*



Elements of the definition of credit institution (6)

*An undertaking the business of which is to take deposits or other repayable funds from the public and **to grant credits** for its own account*

➤ **Granting credits**

- Broad interpretation
- Includes at least what is covered in the second activity in Annex 1 to the CRD4: consumer credit, mortgage credit, factoring, financing of commercial transactions



Questions?