



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

## Template for comments

### Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

**Institution/Company**

European Association of Co-operative Banks (EACB)

**Contact person**

**Mr/Ms**

**First name**

**Surname**

**Email address**

**Telephone number**

Please tick here if you do not wish your personal data to be published.

**General comments**

In terms of aspects of general relevance, we would highlight the following:

A yearly (or a regular) update of the O&Ds tools would be more appropriate to ensure that the supervisory practices are in line not only with the regulatory framework but also with the general developments of risk management practices and supervisory dialogue experiences. At the same time we encourage the ECB to consult in the future on its policy changes, including those to the O&Ds, during the "regular" business season, as banks' human resources are already stretched and even more so during summer, making it particularly difficult to assess the extent of the proposed amendments when relevant experts are on their annual leave.

Since the O&Ds regarding the required stable funding factors for off-balance-sheet exposures of the NSFR (Art 428p Para 10 CRR II) are updated, we propose in this regard to unify the notification form for the LCR and the NSFR (with equal treatment of the weighting rates for committed facilities). Currently the LCR is more granular in this respect.

## Template for comments

### Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

#### ECB Guide on Options and Discretions under Union law

Please enter all your feedback in this list.

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- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
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**Deadline:** midnight CET on 23 August

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board
1	Section II Chapter 4, 5 (3) (iii)	35	Amendment	While the English language version remained unchanged in this passage ("clear commitment"), the German language version has been amended (previously "eindeutig zugesagt", now "eindeutig verpflichtet").	There is no reason to adapt the wording in the German language version if the English version remains unchanged.
2	Section III Chapter 4, 1	71	Clarification	In the Guideline, for recital (2), a deletion of the associated passage is proposed (please refer to our comment in that respect). This raises the question on how these elements fit together.	See under "Detailed Comment".

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3	Section II, Chapter 1, 9	20	Deletion	<p>The requirements of Art. 18 CRR result in a distinction being made between the regulatory scope of consolidation for purposes of solvency, large exposures, leverage ratio, etc. on the one hand, and for liquidity purposes (Part 6 CRR) on the other. In order to meet the requirements of Part 6 CRR, the entities referred to in paragraphs 3 to 6 of Article 18 CRR are not to be taken into account pursuant to Article 18 (1) CRR. Thus, individual entities may be excluded from the regulatory scope of consolidation for liquidity purposes, while they are included in the regulatory scope of consolidation for e.g. solvency or large exposure purposes.</p> <p>In addition, it should also be noted that, via the existing options in Art. 7 and Art. 8 CRR, distinctions are certainly made in meeting the requirements for solvency, large exposures and leverage ratio, as well as for liquidity purposes.</p> <p>Against the background of the different risks and the different data and process requirements for meeting the respective requirements (book values vs. cash flow information in the case of the LCR and AMM), we consider a different treatment of liquidity and other risks to be reasonable in principle.</p> <p>With the present draft of the revised version of the OnD Guide in Chapter 1, para. 9, we believe the ECB goes beyond the framework set out in the CRR: <i>"In this respect, institutions, financial institutions or ancillary services undertakings which are a subsidiary or an undertaking in which a participation is held may be considered of negligible interest only with respect to the objectives of monitoring institutions when institutions are able to provide strong evidence of such negligible interest on the basis of a comprehensive assessment of <b>all the risks stemming from these entities</b>, and the ECB decides on a case-by-case basis that their exclusion from the scope of prudential consolidation does not and is not expected to affect the monitoring of institutions on a consolidated basis."</i></p> <p>In our view, Art. 19 (2) CRR does not provide that an exemption can only be granted if an entity is negligible with regard to <b>all risks</b> at the same time, because otherwise Art. 18 CRR would already not provide for a distinction in prudential consolidation.</p> <p>We therefore <b>propose to delete the wording "... of all the risks stemming from these entities..."</b> and to include a wording in the sense of <i>"[...] of the relevant risks regards to the waiver an institution is applying for [...]"</i>.</p> <p>In our opinion, the wording in the next sentence of the draft <i>"In the exceptional case that the ECB permits the exclusion of a subsidiary or of an entity in which a participation is held from the scope of consolidation, ..."</i> is also not covered by the regulatory text. The possibility to apply for an exemption pursuant to Article 19 (2) CRR is in no way inferior to other options provided for in the CRR.</p> <p>We therefore propose to <b>delete the word "...exceptional ..."</b>.</p>	ECB exceeds the competences specified by the CRR

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4	Section II, Chapter 6, 18	59	Clarification	<p>Under para. 18 of Chapter 6 (Liquidity), the ECB indicates it intends to allow an application of the simplified NSFR also for small subsidiaries of ECB-regulated banking groups: "<i>Where the applicant institution belongs to a group with an EU parent institution that does not meet the definition of a small and non-complex institution defined under Article 4(145) of the CRR, the ECB intends to permit the applicant institution to apply the simplified net stable funding requirement only where there is no evidence that such application would prevent the group from complying with the net stable funding requirement as defined under Chapter 1 of Title IV of Part Six of the CRR at the consolidated level.</i>" It is unclear whether this statement is to be understood as meaning that if the sNSFR is applied to subsidiaries of an ECB-regulated banking group and the NSFR calculated at the consolidated group level is &gt; 100%, the sNSFR can be applied at the level of the individual institution and the sNSFR reporting items can be included in the group reporting items in accordance with the subsidiary's reporting forms C.82 and C.83.</p>	Benefits of the option depends on the requirements of the implementation
5	Section II, Chapter 1, 4. LIQUIDITY WAIVERS  "Further specifications – waiver of the NSFR requirement"	13	Deletion	<p>We suggest deleting of the following paragraph: "<i>(i) The ECB intends to exclude liquidity reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of cases where all the credit institutions that form a liquidity sub-group are located in the same Member State.</i>"</p> <p>Where a liquidity waiver has been granted, we do not understand the need to systematically maintain liquidity reporting requirement. Though CRR envisages that liquidity requirements could be waived only partially, this should be substantiated with reasons that would be specific to limited circumstances.</p> <p>-In general, liquidity requirements, including liquidity reporting requirements, should be waived in full.</p> <p>-It should also be clarified that the waivers that have been already granted in full should not be modified to introduce individual liquidity reporting requirements.</p> <p>-When liquidity sub-groups are modified, or for new sub-groups, this should also be the case.</p> <p>Keeping in place liquidity reporting requirements at solo level would be contrary to the proportionality principle and contrary to the waiver principle itself. This paragraph would mitigate the full benefits of the waiver and maintain the liquidity reporting burden for European banks for entities that would be waived from liquidity requirements as they are included in liquidity sub-groups.</p>	The systematic denial of waiving individual liquidity reporting requirements would contradict the objective of the waiver and would maintain the reporting burden for European banks in a context where a liquidity waiver has been granted.
6	Section II, Chapter 3, 4. MATURITY OF EXPOSURES (art 162 of the CRR)	29	Amendment	<p>Even though this is not under revision compared to previous ECB Guide, we would like ECB to consider allowing the usage of the effective maturity for IRB-F</p> <p>Indeed, we note the change of philosophy concerning the mandatory general roll-out towards advanced model. We observe the growing size of the IRB-F portfolio in particular with the coming implementation of the finalisation of Basel III, and the growing impact of not allowing the usage of the effective maturity in particular for short term exposures and diversified banks. We also understand that a change in level 1 text has been supported by the EBA (cf. response to the Call for Advice).</p>	Growing impact of not allowing the usage of the effective maturity under F-IRB in the context of the finalisation of Basel III

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### Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

#### ECB Regulation on Options and Discretions under Union law

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1				

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### Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

#### ECB Guideline on Options and Discretions under Union law

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1	Recital (2)	Deletion	<p>According to the last sentence in recital (2) of the ECB Guideline for LSIs, in the absence of further evidence and analysis, the general policy authorising the application of a 3% outflow rate to stable retail deposits covered by a DGS should be removed from Regulation (EU) 2016/445 and thus from the O&amp;D Guideline.</p> <p>We believe that rather than deleting this possibility, the current approach should be retained.</p> <p>The possibility of granting of a 3% outflow rate by confirming certain conditions by the Commission itself is a conscious decision of the legislator (see recital (13) of Regulation (EU) 2015/61), which should at last be filled with life. The suggestion of deletion at this point also contradicts the statements in the ECB Guide, there under Section III. Chapter 4 1 (see above). It should be possible to provide evidence of the outflow rate for institutions affiliated e.g. to a recognized IPS in accordance with Art. 113 (7) CRR at the IPS level. If the requirements of Art. 113 (7) CRR are met, there is a free transfer of liquidity between the IPS institutions.</p>	<p>Instead of deletion, the possibility should remain to be able to provide the necessary evidence for the institutions as the possibility was clearly framed the legislator and it is of great relevance for IPSs.</p>

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### Public consultation on revisions to the ECB's policies concerning the exercise of Options and Discretions (O&Ds) in Union law

#### ECB Recommendation on Options and Discretions under Union law

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1	Annex, page 7	Amendment	See our comment on Section II, Chapter 1, 9 page 20 of the Guide	ECB exceeds the competences specified by the CRR