



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Review of options and discretions

Explanatory memorandum

BANKENTOEZICHT

June 2021

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1 Context of the proposed act

1.1 Reasons for and objective of the proposal

The European legislative framework contains a significant number of options and discretions (“O&Ds”) assigned to competent authorities for the prudential supervision of credit institutions. With a view to ensuring consistent standards of supervision and comparability across credit institutions within the Single Supervisory Mechanism (SSM), the European Central Bank (ECB) exercises O&Ds in a harmonised manner for significant credit institutions and promotes the harmonised exercise of O&Ds by the national competent authorities (NCAs) in relation to less significant institutions (LSIs).

The ECB developed its current policy framework for the exercise of O&Ds between November 2014 and April 2017. The framework comprises four “O&D instruments”:

- a guide¹, first published in 2016, containing specific policy guidance for Joint Supervisory Teams (JSTs) to follow when assessing individual applications by significant supervised institutions in relation to the exercise of O&Ds applicable on a case-by-case basis (the “ECB Guide”);
- a regulation², adopted in 2016, in which the ECB exercises several O&Ds of a generally applicable nature in respect of significant credit institutions (the “ECB Regulation”);
- a recommendation³, published in April 2017, addressed to NCAs in respect of the exercise of O&Ds applicable on a case-by case basis for LSIs or for which a common approach specific to LSIs is warranted (the “ECB Recommendation”);
- a guideline⁴, also published in April 2017 and addressed to NCAs, concerning the exercise of O&Ds of a generally applicable nature in respect of LSIs (the “ECB Guideline”).

In this consultation, the ECB is proposing several updates and amendments to the latest versions of these O&D instruments. Most of the proposed changes are needed because of legislative changes introduced since the instruments were adopted in

¹ ECB Guide on options and discretions available in Union law.

² Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

³ Recommendation of the European Central Bank of 4 April 2017 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/10) (OJ C 120, 13.4.2017, p. 2).

⁴ Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9) (OJ L 101, 13.4.2017, p. 156).

2016-17. Most notably, Regulation (EU) 2019/876⁵ and Directive (EU) 2019/878⁶ (the “CRR II-CRD V package”) introduced some new O&Ds into the EU legislative framework while amending some of the existing O&Ds. These legislative changes require certain changes to be made to the O&D instruments.

In addition, the ECB is proposing to introduce some changes to the O&D instruments on the basis of the supervisory experience that it has gained since the adoption of the O&D instruments in 2016-17.

The updated version of the ECB Guide and the amendments to the ECB Regulation, the ECB Guideline and the ECB Recommendation will be revised once the comments stemming from this consultation have been assessed. Once the updated ECB Guide and the amending instruments have been approved by the Supervisory Board and the Governing Council, the updated version of the ECB Guide and the consolidated versions of the ECB Regulation, the ECB Recommendation and ECB Guideline will be published on the ECB website.

1.2 Extension of O&D policies to the supervision of LSIs

Although NCAs are primarily responsible for exercising the O&Ds granted to competent authorities by Union law in relation to LSIs, the ECB’s overarching oversight role within the SSM enables it to promote the consistent exercise of O&Ds in relation to both significant institutions (SIs) and LSIs, where appropriate. This ensures that (a) the prudential supervision of all credit institutions in the participating Member States is implemented in a coherent and effective manner; (b) the single rulebook for financial services is applied consistently to all credit institutions in the participating Member States; and (c) that all credit institutions are subject to supervision of the highest quality.

When developing the original versions of the ECB Recommendation and the ECB Guideline, the ECB was guided by the principle that the same prudential rules should apply for the same risk exposure (e.g. triggered by business model and risk level). At the same time, the ECB also paid particular attention to the principle of proportionality, i.e. to what extent a different policy for LSIs may be warranted for the exercise of specific options.

Taking these considerations into account, for most O&Ds the ECB is of the view that NCAs should follow the same policies when exercising O&Ds for LSIs as the ECB follows for SIs. In the original ECB Guideline, the ECB specified eight O&Ds of general application for which the exercise by NCAs in relation to LSIs should be fully

⁵ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

⁶ Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

aligned to the ECB's exercise of the relevant O&Ds in the ECB Regulation. Similarly, the original ECB Recommendation specified that for most of the O&Ds for which the ECB had set out supervisory policies in the ECB Guide, the NCAs should follow an identical approach when exercising these O&Ds for LSIs. The original ECB Recommendation did, however, identify eight O&Ds where a specific approach for LSIs was recommended.

The revised O&D policies for SIs and LSIs have been developed in a single process in close cooperation with the NCAs. This was to ensure that ECB policies were consistent across SIs and LSIs, with a view to fostering financial integration, ensuring coherent application of high supervisory standards and maintaining a level playing field.

Reflecting this unified policy development process, the amending ECB Guideline and amending ECB Recommendation submitted for consultation alongside this explanatory memorandum propose that for almost all of the new or revised O&Ds, the policy adopted by NCAs in respect of LSIs should be the same as the policy that will be adopted by the ECB in respect of SIs. For two specific O&Ds, concerning reductions of own funds (Article 78(1) of the Capital Requirements Regulation (CRR)⁷), a specific treatment for LSIs has been provided in the draft amending ECB Recommendation.

Where the original ECB Recommendation, as amended by the amending ECB Recommendation submitted for consultation along with this document, cross-refers to the ECB Guide, NCAs are recommended to interpret the relevant provisions *mutatis mutandis*, taking into consideration the allocation of competences set out in the SSM Regulation⁸ and the SRM Regulation.⁹ This means that references to the ECB as the competent supervisory authority should be interpreted as implying a reference to the relevant NCA, where appropriate; likewise, references to the Single Resolution Board (SRB) should be interpreted as implying either the SRB or the relevant national resolution authority (NRA), as appropriate.

⁷ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁸ Article 6(4) and (6) of 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 (OJ L 287, 29.10.2013, p. 63), according to which the ECB is the competent supervisory authority for SIs and the NCAs are the competent supervisory authorities for LSIs.

⁹ Article 7(2) and (3) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1), according to which the SRB is the competent resolution authority for cross-border LSIs, while the NRA is the competent resolution authority for the remaining LSIs.

2 Impact assessment, monitoring and evaluation

As noted in the explanatory memorandum published when the ECB first consulted on the O&D framework in 2015, the harmonisation of most O&Ds, taken individually, does not result in a material and immediate quantitative impact. At the same time, the ECB considers that by publishing the policy guidance it intends to follow when assessing individual applications by credit institutions – and, where relevant, by adopting policies of a generally applicable nature – it generates a significant overall benefit in terms of a more consistent, simple and transparent prudential framework.

It should be noted that the impact of the changes to the O&D Guide and the O&D Recommendation proposed in this consultation will depend in most cases on applications from the credit institutions themselves.

Similarly, the impact of the proposed changes to the O&D Regulation and the O&D Guideline relating to exemptions from the large exposures framework will depend on the extent to which credit institutions make use of those exemptions. The ECB does not expect the revision of the scope of the intragroup exposures that are exempted from the large exposures limit under Article 9 of the O&D Regulation to have a material or immediate impact on credit institutions. Credit institutions that fulfil the criteria set out in Article 400(3) of the CRR, as further specified in Annex 1 of the O&D Regulation, will continue to be permitted to exempt exposures to group entities located in third countries, subject to prior approval by the ECB as set out in the revised version of the O&D Guide.

The proposed amendments to the O&D Regulation and O&D Guideline relating to the identification of major stock indices in a Member State or in a third country (pursuant to Article 12(1)(c)(i) of Commission Delegated Regulation (EU) 2015/61) are unlikely to materially affect the liquidity coverage ratio (LCR) of credit institutions. The ECB policy clarifies the indices which would in any case qualify as major stock indices for the purpose of the LCR, while still allowing credit institutions to consider other indices which comprise leading companies in relevant jurisdictions. The indices referred to in the proposed ECB policy are likely to have already been considered by credit institutions, albeit not necessarily in a consistent manner.

The proposed policy in the O&D Regulation and O&D Guideline concerning required stable funding (RSF) factors for off-balance sheet exposures (pursuant to Article 428p(10) of the CRR) will trigger higher stable funding requirements relative to a scenario where the ECB does not determine RSF factors for such exposures. However, since the proposed policy links the RSF factors for these exposures to the outflow rates applied to related products and services in the context of the liquidity coverage requirement (pursuant to Article 23 of Commission Delegated Regulation (EU) 2015/61), the actual impact will depend on the outflow rates applied in the context of the LCR, which, in turn, depend on the features of the actual products and services reported. The ECB may determine different RSF factors, as appropriate.

The proposed policy in the O&D Regulation and O&D Guideline concerning the determination of the term of encumbrance for assets that have been segregated (pursuant to Article 428q(2) of the CRR) may trigger higher stable funding requirements in cases where credit institutions would otherwise assume a smaller encumbrance period for those assets.

Since the ECB policies concerning the net stable funding ratio (NSFR), as referred to above, will also be the same for institutions that are granted permission to apply the simplified net stable funding requirement referred to in Chapter 5 of Title IV of Part Six of the CRR, the expected impact does not differ from the above for these institutions.

3 Legal elements of the proposal

The ECB is the competent authority in the Member States of the SSM for the purpose of carrying out the microprudential tasks entrusted to it by the SSM Regulation (Article 9(1)). In this respect, the ECB is entrusted with, and can exercise, all powers that competent and designated authorities have under Union law, such as the power to exercise options and discretions (see Article 4(3) and Recital 34 of the SSM Regulation).

The ECB has a wide latitude of discretion in exercising the O&Ds granted to competent authorities and provided for in Union law, under certain conditions and with due respect for the legitimate expectations of supervised entities, where appropriate.

For the exercise of O&Ds with general application, a regulation is an appropriate legal instrument. For the exercise of O&Ds applicable on a case-by-case basis, a supervisory decision addressed to a specific supervised entity would be the appropriate legal instrument. Nonetheless, for the latter category the ECB Guide sets out general criteria for the exercise of case-by-case assessments with a view to ensuring a consistent application of supervisory discretion.

As regards the exercise of O&Ds for LSIs, under Article 4(3) of the SSM Regulation the ECB may, where deemed necessary, adopt, among other things, guidelines (binding legal instruments) and recommendations (non-binding legal instruments) applicable to NCAs for the prudential supervision of LSIs, having in mind, in particular, its responsibility to ensure the effective and consistent functioning of the SSM.

In particular, the ECB Guideline sets out how NCAs should exercise a number of O&Ds of general application for LSIs where a specific policy rationale justifies the adoption of a uniform approach. The ECB Recommendation provides guidance to NCAs on how to individually assess certain other O&Ds for which a common LSI-specific approach is warranted.

The revisions made to the O&D instruments submitted for public consultation with this document aim not only to provide transparency, but also to develop general guidance for a number of O&Ds that have been either introduced or amended by legislation adopted since the O&D instruments were published. The revision of the instruments also introduces a number of amendments based on supervisory experience of exercising certain O&Ds gathered since the instruments were first published, as well as some amendments aimed at improving the clarity of the text.

4 Explanation of the proposal and policy rationale

4.1 Summary of the proposals and policy rationale

The proposed amendments to the original versions of the O&D instruments are introduced through the following instruments:

- a revised version of the ECB Guide;
- a regulation amending the ECB Regulation;
- a recommendation amending the ECB Recommendation;
- a guideline amending the ECB Guideline.

The following sections summarise the content of and the underlying policy rationale for the proposed changes to the ECB's framework for O&Ds.

4.1.1 Revisions to the ECB Guide

The revised version of the ECB Guide retains the same structure as the original version: Section I introduces the purpose, legal framework, scope, content and effect of the Guide as a non-binding instrument; Section II lays out the harmonised policy approach adopted by the ECB regarding the O&Ds; and Section III contains a description of the follow-up actions required for a small number of O&Ds, mostly applicable on a case-by-case basis.

Many of the adjustments in the revised version of the ECB Guide are editorial and are intended to improve the consistency of the document, for instance with regard to legal references in the light of the introduction of new amending legislation or, in some cases, to improve the alignment between the ECB Guide and the underlying legislation.

The substantive changes introduced in the revised version of the ECB Guide are as follows.

4.1.1.1 O&Ds for exceptional circumstances or in support of monetary policy

Regulation (EU) 2019/876 and Commission Delegated Regulation (EU) 2018/1620¹⁰ introduced to the European legislative framework a number of O&Ds that competent authorities may exercise in exceptional circumstances or in support of monetary policy. As set out in Part 3 of Section 1 of the revised ECB Guide, the ECB does not expect to receive applications from credit institutions in relation to these O&Ds. Instead, the ECB, acting as competent authority, will exercise these O&Ds in exceptional circumstances and under the conditions set forth by the relevant legislative provisions, in consultation with, or subject to the approval of, the relevant central bank, as appropriate.

4.1.1.2 Section II, Chapter 1: Consolidated supervision and waivers of prudential requirements

- **Waivers from prudential requirements (Article 7 of the CRR)**

As regards the assessment of applications for waivers from prudential requirements under Article 7(1) of the CRR, the reference to the leverage ratio as a reporting and disclosure requirement in point 5 of paragraph 3 of the original version of the ECB Guide has been deleted. This is because the text is superseded by the introduction of the leverage ratio as a Pillar 1 requirement in the CRR.

The original version of the ECB Guide specified that for the purposes of assessing, under Article 7(3) of the CRR, whether a waiver should be granted to a parent institution in a Member State, the ECB intended to take into account, *mutatis mutandis*, the relevant specifications mentioned in relation to Article 7(1) of the CRR. To increase the clarity of the specifications to be considered in assessments relating to Article 7(3) of the CRR, and to address an error in the numbering of the documentation relating to Article 7(3) applications in the original version of the Guide, the specific considerations that the ECB will take into account and the documentation credit institutions are expected to submit in relation to Article 7(3) waivers have been listed separately from those for Article 7(1) waivers.

- **Waivers from liquidity requirements (Article 8 of the CRR)**

Several changes have been made to the specifications for the assessment of applications for waivers from liquidity requirements under Article 8 of the CRR. The need for these changes primarily stems from the introduction of the net stable funding requirement as a Pillar 1 requirement under the CRR. The specifications in the original version of the ECB Guide focused on a waiver of the liquidity coverage requirement. The revised version of the Guide extends the current guidance by introducing specifications in relation to the NSFR requirement. Furthermore, the

¹⁰ Commission Delegated Regulation (EU) 2018/1620 of 13 July 2018 amending Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 271, 30.10.2018, p. 10).

general policy now also introduces an additional specification in relation to exercising the waiver of the application of the Supervisory Review and Evaluation Process (SREP) in relation to liquidity risk (see Article 86 of the CRD) at individual level.

Two changes have been introduced with regard to the ECB's expectations concerning liquidity waivers where institutions of the single liquidity sub-group are authorised in several Member States. These changes relate in particular to Article 8(3)(b) of the CRR concerning the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group, where the LCR requirement as laid down in the delegated act referred to in Article 460(1) is waived, and the distribution of amounts and location of available stable funding within the single liquidity sub-group, where the NSFR requirement set out in Title IV of Part Six is waived. A detailed rationale for these changes is provided in Section 4.2.2.

- **Supervision on a sub-consolidated basis (Article 11(6) of the CRR)**

The considerations that the ECB will take into account to require an institution to comply with prudential requirements on a sub-consolidated basis pursuant to Article 11(6) of the CRR have been moved from Section III to Section II of the ECB Guide. This is to recognise that the European Commission formally withdrew the proposal for a structural reform of the European banking sector.¹¹

- **Valuation of unconsolidated subsidiaries or participations (Article 18(7) of the CRR)**

Regulation (EU) 2019/876 introduced a new discretion according to which competent authorities may allow or require institutions to apply a different valuation method to certain subsidiaries or participations. The revised version of the Guide sets out the evidence that the ECB will expect credit institutions to provide as part of their applications for permission to use a valuation method other than the equity method.

- **Exclusion from consolidation (Article 19(2) of the CRR)**

The policy guidance in the original version of the ECB Guide in relation to Article 19(2) of the CRR has been amended. The revised version of the Guide removes the reference to the Basel standards and addresses some inconsistencies in the scope of application of the provision. The revised version of the Guide also provides further guidance on the ECB's view of what constitutes a "negligible interest only with respect to the objectives of monitoring credit institutions".

¹¹ See [Annex IV](#) to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2018.

4.1.1.3 Section II, Chapter 2: Own funds

- **Classification of subsequent issuances as Common Equity Tier 1 (CET1) instruments**

The revised version of the ECB Guide provides policy guidance in relation to Article 26(3) of the CRR regarding the classification as CET1 instruments of subsequent issuances of a form of instrument for which credit institutions have already received permission to classify as a CET1 instrument.

- **Deduction of holdings of financial sector entities (Article 49(2) of the CRR)**

The ECB Guide has been updated to reflect the different deduction regimes applicable for the calculation of the requirements for own funds and eligible liabilities for global systemically important institutions (G-SIIs) and for non-EU G-SIIs, as set out in Article 72e(4) of the CRR.

- **Calculation of the trigger of Additional Tier 1 instruments issued by subsidiary undertakings established in a third country (Article 54(1)(e) of the CRR)**

Article 54(1) of the CRR requires institutions to calculate the trigger of Additional Tier 1 instruments issued by third-country subsidiaries in accordance with the national law of that third country or contractual provisions governing the instruments, provided that the competent authority, after consulting the European Banking Authority (EBA), considers those provisions to be at least equivalent to the requirements of Article 54 of the CRR. The revised version of the ECB Guide introduces policy guidance on the circumstances under which the ECB will consider the national law of the third country, or the contractual provisions governing the instruments, as equivalent to the requirements set out in Article 54 of the CRR.

- **Reduction of own funds (Article 78 of the CRR)**

For Article 78(1)(b) of the CRR, the revised version of the ECB Guide provides amended guidance that takes into account changes in the CRR introduced by Regulation (EU) 2019/876. In particular, the revised version of the ECB Guide provides guidance on the margin over the requirements laid down in the CRR, the CRD and Directive 2014/59/EU that the ECB considers necessary to grant credit institutions permission to reduce own funds. Applications to reduce own funds received from institutions that do not adhere to the margin may still be approved on a case-by-case basis where it is duly justified by well-founded prudential arguments¹². The specifications in relation to this article have also been updated to include a reference to the leverage ratio framework.

¹² For example, in the context of the coronavirus (COVID-19) crisis, the ECB has encouraged credit institutions to use, among other things, the capital held to meet the Pillar 2 Guidance (P2G) for lending purposes and loss absorption. The ECB also committed to allowing credit institutions to operate below the P2G until at least the end of 2022 without automatically triggering supervisory actions. Within this period, credit institutions that make use of the P2G for these purposes may still be allowed to reduce their own funds on a case-by-case basis provided that this is duly justified by well-founded prudential arguments and the conditions set out in Article 78(1)(b) are still met.

In addition, the revised version of the ECB Guide introduces new guidance on the conditions that the ECB will take into account when considering applications to grant general prior permission for credit institutions to reduce own funds in accordance with the second sub-paragraph of Article 78(1) of the CRR.

Finally, the revised version of the ECB Guide sets out new guidance on the factors that the ECB will take into account when permitting reductions of Additional Tier 1 or Tier 2 instruments during the five years following their date of issuance in accordance with Article 78(4) of the CRR.

4.1.1.4 Chapter 3: Capital requirements (Article 129 to Article 382 of the CRR)

- **Exposures in the form of covered bonds (Article 129 of the CRR)**

The policy guidance in the original version of the ECB Guide in relation to exposures in the form of covered bonds has been deleted to reflect amendments to the CRR introduced by Regulation (EU) 2019/2160 (Covered Bond Regulation)¹³.

- **Treatment of exposures to central counterparties (Article 310 and Article 311(3) of the CRR)**

The policy guidance in the original version of the ECB Guide in relation to the discretion to permit credit institutions to apply a specific treatment to trade exposures and default fund contributions to a central counterparty has been deleted because the legal basis for the exercise of that discretion has been deleted in the CRR.

- **Operational risk: basic indicator approach (Article 315(3) of the CRR) and standardised approach (Article 317 of the CRR) with regard to own funds requirements**

The policy guidance in the original version of the ECB Guide in relation to the exercise of the options in Articles 315(3) and 317 of the CRR has been moved from Section III to Section II of the ECB Guide. The reference in the original version of the ECB Guide to potentially developing more detailed specifications after an assessment of future specific cases has been deleted.

4.1.1.5 Chapter 4: Institutional protection schemes

- **Deduction of holdings in the presence of institutional protection schemes (Article 49(3) of the CRR)**

The revised version of the ECB Guide updates the guidance in relation to deductions of own funds instruments in other institutions falling within the same institutional

¹³ Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds (OJ L 328, 18.12.2019, p. 1).

protection scheme (IPS). The revisions take into account amendments to the CRR introduced by Regulation (EU) 2019/876, in particular the mandate for the EBA to develop the implementing technical standards referred to in Article 430(7) of the CRR.

4.1.1.6 Chapter 5: Large exposures

- **Compliance with the large exposures requirements (Articles 395 and 396 of the CRR)**

With regard to Article 396 of the CRR, the reference to “eligible capital” in the original version of the ECB Guide to has been changed to “Tier 1 capital” in the revised version of the ECB Guide. The change ensures that the policy guidance is fully aligned with Article 396 of CRR.

- **Exemptions from the limits to large exposures: third-country intragroup exposures (Article 400(2)(c) of the CRR)**

It is proposed to introduce specifications for case-by-case prior supervisory assessments of exemptions of exposures from the large exposures limit where third-country entities are involved.

A detailed policy rationale is provided in Section 4.2 of this Memorandum.

4.1.1.7 Chapter 6: Liquidity

- **Currency mismatches (Article 8(6) of Commission Delegated Regulation (EU) 2015/61)**

Amendments have been made to the policy guidance relating to the discretion for competent authorities to restrict currency mismatches by setting limits on the proportion of net liquidity outflows in a currency that can be met during a stress period by holding high-quality liquid assets not denominated in that currency. The amended text specifies that the ECB does not require all credit institutions to comply with a 100% LCR requirement in relation to the LCR for items denominated in significant currencies (as defined in Article 415(2) of the CRR). Instead, the ECB will assess potential currency mismatches against the factors referred to under Article 8(6) of Commission Delegated Regulation (EU) 2015/61 as well as the credit institution-specific contingency plans to resolve currency mismatches during times of idiosyncratic and/or market-wide stress. Based on this assessment, the ECB may then impose potential restrictions on currency mismatches on a case-by-case basis.

- **Diversification of holdings of liquid assets (Article 8(1) of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance relating to the imposition of specific requirements for the diversification of holdings of liquid assets has been amended to clarify that, despite

the fact that the Commission Delegated Regulation (EU) 2015/61 limits possible restrictions to certain asset classes (i.e. assets other than those listed under Articles 8(1)(a) and (b) of Commission Delegated Regulation (EU) 2015/61), the ECB will assess more generally (e.g. in the context of the SREP) whether credit institutions have policies and limits in place to ensure that the LCR liquidity buffer is appropriately diversified at all times as required under Article 8(1) of Commission Delegated Regulation (EU) 2015/61.

- **Haircuts on extremely high-quality covered bonds (Article 10(2) of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance has been deleted because Article 10(2) of Commission Delegated Regulation (EU) 2015/61 does not provide competent authorities with an explicit discretion to impose haircuts exceeding 7% on extremely high-quality covered bonds referred to in Article 10(1)(f) of Commission Delegated Regulation (EU) 2015/61.

- **Outflows for other products and services (Article 23(2) of Commission Delegated Regulation (EU) 2015/61)**

Further details are provided on the policy guidance relating to the determination of outflows to be assigned to the products and services for which the likelihood and potential volume of the liquidity outflows from products and services referred to in Article 23(1) of Commission Delegated Regulation (EU) 2015/61 are material. The guidance now explains that the ECB will determine the outflows to be assigned either by accepting the outflow rates applied by the credit institutions or by setting the outflow rates itself. Furthermore, with regard to the identification of the products and services to be considered under this provision, a reference has been introduced to the high-level principles and examples provided by the EBA in the first EBA report¹⁴ on the implementation of the LCR in the EU or any future publications and specifications by the EBA on this provision.

- **Multiplier for retail deposits covered by a deposit guarantee scheme (Article 24(6) of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance on allowing credit institutions to multiply by 3% the amount of the retail deposits covered by a deposit guarantee scheme in a third country has been moved from Section II to Section III of the ECB Guide. A detailed policy rationale is provided in Section 4.2.2 of this Memorandum.

- **Outflows with interdependent inflows (Article 26 of Commission Delegated Regulation (EU) 2015/61)**

A detailed policy rationale is provided in Section 4.2.2.

¹⁴ "Monitoring of liquidity coverage ratio implementation in the EU – First report", European Banking Authority, July 2018.

- **Preferential treatment within a group or an IPS (Article 29 of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance relating to the application of a lower outflow rate for undrawn credit or liquidity facilities in the case where the credit institution and the counterparty are not established in the same Member State has been replaced with a reference to Commission Delegated Regulation (EU) 2017/1230¹⁵, which fully specifies the criteria laid down in Article 29(2) of Commission Delegated Regulation (EU) 2015/61.

- **Additional collateral outflows from downgrade triggers (Article 30(2) of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance relating to the inclusion of an additional outflow for all contracts whose contractual conditions will trigger additional liquidity outflows or collateral needs within 30 calendar days following a material deterioration of the credit quality of the credit institution has been amended by removing the review clause associated with the threshold to identify material outflows.

- **Cap on inflows (Article 33(2) of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance relating to the discretion for competent authorities to allow for a full or partial exemption of liquidity inflows from the 75% cap on inflows referred to in Article 33(1) of Commission Delegated Regulation (EU) 2015/61 has been amended to reflect the completed phase-in of the 100% LCR requirement as of 1 January 2018.

- **Intragroup liquidity inflows (Article 34 of Commission Delegated Regulation (EU) 2015/61)**

The policy guidance relating to the application of a higher inflow rate for undrawn credit and liquidity facilities where the credit institution and the counterparty are not established in the same Member State has been replaced with a reference to Commission Delegated Regulation (EU) 2017/1230, which fully specifies the criteria laid down in Article 34(2) of Commission Delegated Regulation (EU) 2015/61.

- **Restriction of currency mismatches (Article 428b(5) of the CRR)**

Policy guidance has been developed in relation to the discretion for competent authorities to restrict currency mismatches by setting limits on the proportion of required stable funding in a particular currency that can be met by available stable funding that is not denominated in that currency. In particular, it is specified that the ECB does not require all credit institutions to comply with a 100% NSFR for items denominated in significant currencies (as defined in Article 415(2) of the CRR). Instead, the ECB will assess potential mismatches against the factors referred to under points (a) and (b) of Article 428b(5) of the CRR. Based on this assessment,

¹⁵ Commission Delegated Regulation (EU) 2017/1230 of 31 May 2017 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the additional objective criteria for the application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme (OJ L 177, 8.7.2017, p. 7).

the ECB may then impose potential restrictions to currency mismatches on a case-by-case basis.

- **Interdependent assets and liabilities (Article 428f(1) of the CRR)**

Policy guidance has been developed relating to the discretion for competent authorities to allow credit institutions to treat an asset and a liability as interdependent. The policy guidance further specifies the objective criteria set out in Article 428f(1) of the CRR. Moreover, the guidance specifies that credit institutions that intend to apply for this discretion will be expected to submit to the ECB ex ante information about (i) the outstanding balance of the assets and liabilities which would be treated as interdependent and (ii) the impact on the NSFR if the ECB were to allow the credit institution to treat the relevant asset and liability as interdependent.

- **Preferential treatment within a group or an IPS (Article 428h of the CRR)**

Policy guidance has been developed in relation to the discretion for competent authorities to allow credit institutions to apply a higher available stable funding factor or a lower required stable funding factor to certain assets, liabilities and committed credit or liquidity facilities. The policy guidance further specifies the objective criteria set out in Article 428h of the CRR. As some of the conditions for this discretion are equivalent to those mentioned in Commission Delegated Regulation (EU) 2015/61 for the purpose of the LCR, the ECB intends to apply similar specifications in relation to the preferential treatment in the NSFR. There will be some differences, where necessary, to account for the specific characteristics of the NSFR.

- **Application of the simplified net stable funding requirement (Article 428ai of the CRR)**

Policy guidance has been developed in relation to the discretion for competent authorities to allow small and non-complex institutions to calculate the ratio between a credit institution's available stable funding as referred to in Chapter 6 of the CRR, and the credit institution's required stable funding as referred to in Chapter 7 of the CRR (simplified net stable funding requirement). Specifically, it is highlighted that the ECB generally intends to permit small and non-complex institutions as defined under Article 4(145) of the CRR to apply the simplified net stable funding requirement. However, where the credit institution belongs to a group with an EU parent institution that does not meet the definition of a small and non-complex institution, the ECB intends to permit the credit 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 fully fledged net stable funding requirement as defined under Chapter 1 of Title IV of Part Six of the CRR.

4.1.1.8 Chapter 7: Leverage

- **Exclusion of intragroup exposures from the calculation of the leverage ratio (Article 429(7) of the CRR as introduced by Commission Delegated Regulation (EU) 2015/62)**

The discretion provided for in Article 429(7) of the CRR has been deleted by Regulation (EU) 2019/876. Therefore, the specific guidance in relation to this discretion has been deleted in the revised version of the ECB Guide.

- **Treatment of units within credit institutions as public development credit institutions in the calculation of the leverage ratio (Article 429a(2) of the CRR)**

Regulation (EU) 2019/876 introduces into the CRR the discretion for competent authorities to permit institutions to treat a unit within a credit institution as a public development credit institution subject to specific criteria being met. The revised version of the ECB Guide sets out specific policy guidance for JSTs to take into account when exercising this discretion.

- **Preferential treatment for notional cash pooling arrangements (Article 429b(3) of the CRR)**

The revised version of the ECB Guide sets out expectations regarding the information that credit institutions should include in their notification to the JSTs if they intend to apply the preferential treatment for cash pooling provided for in Article 429b(3) of the CRR.

4.1.1.9 Chapter 8: Reporting on prudential requirements and financial information

- **Waiver from reporting requirements for duplicative data points (Article 430(11) of the CRR)**

Article 430(11) of the CRR permits competent authorities to waive the requirement to submit any of the data points set out in the reporting templates specified in the implementing technical standards referred to in Article 430 of the CRR where those data points are duplicative. The ECB expects duplicative reporting to be very rare given the maximum harmonisation principle applied to supervisory reporting. Against this background, the ECB does not intend to ordinarily make use of the waiver provided for in Article 430(11) of the CRR.

- **Own funds requirements for covered bonds (Article 496(1) of the CRR)**

The specific policy guidance relating to the O&D in Article 496(1) of the CRR has been deleted because the period during which the ECB intended to exercise the waiver has ended.

- **Basel 1 floors (Article 500 of the CRR)**

The policy guidance in the original version of the ECB Guide in relation to the Basel 1 floor has been deleted because the legal basis for the exercise of that discretion has been deleted from the CRR.

4.1.1.10 Chapter 9: General requirements for access to the activity of credit institutions

- **Discretion to allow a third-country group to have two intermediate EU parent undertakings in the EU (Article 21b(2) of the CRD)**

Article 21b(2) of the CRD enables competent authorities to allow a third-country group with two or more institutions in the European Union to have two intermediate EU parent undertakings subject to certain conditions. The revised version of the ECB Guide specifies that the ECB intends to exercise this discretion based on a case-by-case analysis of the justifications for having two intermediate EU parent undertakings as set out in Article 21b(2)(a) and (b) of the CRD. Further work is underway to clarify the principles that will inform this analysis.

4.1.1.11 Chapter 11: Governance arrangements and prudential supervision

- **Combining the functions of chair and CEO (Article 88(1)(e) of the CRD)**

The last paragraph of the policy guidance in relation to this provision in the original version of the ECB Guide has been deleted, as the work with the NCAs has concluded.

- **Application of supervisory measures to institutions with similar risk profiles (Article 103 of CRD)**

The policy guidance in the original version of the ECB Guide in relation to the application of supervisory measures to institutions with similar risk profiles has been deleted because the legal basis for the exercise of that discretion has been deleted from the CRD.

- **Determination of the consolidating supervisor (Article 111(6) of the CRD)**

The policy guidance in the original version of the ECB Guide in relation to the determination of the consolidating supervisors has been modified because the legal basis for the exercise of that discretion has been modified in the CRD.

4.1.1.12 O&Ds requiring follow-up actions (Section III of the ECB Guide)

Section III of the original version of the ECB Guide set out a high-level policy direction for 20 O&Ds where specific follow-up actions or further assessment was

envisaged. In several cases, the ECB has decided, on the basis of policy developments, further analysis, or supervisory experience gathered since the publication of the original version of the ECB Guide in 2016, to delete the high-level policy guidance set out in this section.

- **Consolidated supervision and waivers of prudential requirements**

The policy guidance in relation to the waiver of the application of the SREP in relation to liquidity risk (see Article 86 of the CRD) at the individual level (Article 8(5) of the CRR and Article 2(2) of Commission Delegated Regulation (EU) 2015/61) has been introduced into the general ECB waiver policy.

As stated above, the considerations that the ECB will take into account when assessing applications in relation to the exercise of Article 11(6) of the CRR have been moved from Section III to Section II of the ECB Guide.

For the O&Ds on the methods for prudential consolidation under Article 18 of the CRR on which the EBA has been mandated to draft regulatory technical standards (RTS), the ECB will consider the need to further develop specifications for the exercise of those options once the RTS has been finalised.

- **Own funds**

The high-level guidance in relation to redemption of Additional Tier 1 or Tier 2 instruments before five years have elapsed from the date of issue (Article 78(4) of the CRR) has been deleted from Section III, as it is superseded by the new policy guidance on this O&D in Section II of the ECB Guide.

- **Capital requirements**

The ECB no longer plans to publish a list of public sector entities for the purpose of exercising the discretion in Article 116(4) of the CRR to permit public sector entities to be treated as exposures to a central government, regional government or local authority. Therefore, the guidance in relation to this discretion has been deleted from the ECB Guide.

The references to the discretion to set appropriately higher risk weights or stricter eligibility criteria than those set out in Articles 125(2) and 126(2) of the CRR for exposures fully and completely secured by mortgages on residential and commercial immovable property located in the territory of one or more Member States has been removed. This reflects amendments to Articles 124 and 164 of the CRR introduced by Regulation (EU) 2019/876.

The ECB has exercised its discretion under Article 178(2)(d) of CRR in relation to the threshold for the materiality of defaults in relation to obligors' total obligations and at the level of individual credit facilities by adopting Regulation (EU) 2018/1845¹⁶.

¹⁶ Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due (ECB/2018/26) (OJ L 299, 26.11.2018, p. 55).

Accordingly, the reference to this provision in Section III of the ECB Guide has been deleted.

The reference to the eligibility of unfunded credit exposures as referred to in Articles 201(1)(f) and 119(5) of the CRR has been removed because these articles of the CRR do not provide for a competent authority option or discretion.

As stated above, the policy guidance in the original version of the ECB Guide in relation to the exercise of the options in Articles 315(3) and 317 of the CRR has been moved from Section III to Section II of the Guide.

The reference to the ECB's intention to assess the possibility of requiring intragroup transactions between structurally separated institutions to be included in the own funds requirements for credit valuation adjustment in Article 382(4)b of the CRR has been deleted from the ECB Guide because the European Commission formally withdrew the proposal for a structural reform of the European banking sector.¹⁷

- **Large exposures**

The reference to applying large exposure limits below 25% in the case of structural measures, pursuant to Article 395(6) of the CRR, once the European banking structural reform framework is in place has been deleted from the ECB Guide because the European Commission formally withdrew the proposal for a structural reform of the European banking sector.¹⁸

- **Liquidity**

The reference to the ECB stance on liquidity outflows from other products and services (Article 420(2) of the CRR and Article 23(2) of Commission Delegated Regulation (EU) 2015/61) has been removed from Section III of the ECB Guide, as detailed policy guidance on this discretion has been introduced in Section II.

Additional specifications in relation to Article 24(4) and (5) and Article 24(6) of Commission Delegated Regulation (EU) 2015/61 have been added to Section III of the ECB Guide. A detailed policy rationale for the inclusion of this new policy guidance in the ECB Guide is included in Section 4.2.2 of this Memorandum.

As regards the waiver of Article 86 of the CRD, the specifications have now been integrated into the general part of the policy for liquidity waivers in relation to Article 8 of CRR. Specifically, it is highlighted that when considering whether to waive the application of Article 86 of the CRD to an institution, the ECB will take into account whether the application for such a waiver is made in conjunction with a waiver of the application of both the LCR and the NSFR. This is because a waiver of the liquidity SREP at the solo level appears to be reasonable only when there are no other

¹⁷ See [Annex IV](#) to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2018.

¹⁸ Ibid.

quantitative Pillar 1 liquidity requirements that the entity needs to comply with at the individual level.

4.1.2 Amendments to the ECB Regulation

- **Hedging sets (Article 282 of the CRR and Article 5 of the ECB Regulation)**

Article 5 of the ECB Regulation, which refers to hedging sets for counterparty credit risk, has been deleted because the discretion provided for in Article 282(6) of the CRR was deleted by Regulation (EU) 2019/876.

- **Large exposures exemptions (Article 400(2)(c) and Article 400(2)(d) of the CRR and Article 9 of the ECB Regulation)**

The ECB plans to limit the scope of Article 9(3) of the ECB Regulation to intragroup exposures to entities located within the European Union, with the result that intragroup exposures to entities in third countries may only be exempted from the relevant large exposures limits after a prior case-specific supervisory assessment.

Therefore, Article 9(3) and Article 9(4) of the ECB Regulation have been amended to enable credit institutions to make use of a partial exemption from the large exposures limit, pursuant to points (c) and (d) of Article 400(2) of the CRR.

A detailed policy rationale is provided in Section 4.2 of this Memorandum.

- **Reporting obligation (Article 415(3) of the CRR and Article 10 of the ECB Regulation)**

The general policy in relation to the discretion for competent authorities to continue collecting information through monitoring tools for the purpose of monitoring compliance with existing national liquidity standards until the full introduction of binding liquidity requirements has been removed from the ECB Regulation, as the underlying discretion has been removed from Article 415(3) of the CRR.

- **Outflows from other products and services (Article 420(2) of the CRR, Article 23(2) of Commission Delegated Regulation (EU) 2015/61 and Article 11 of the ECB Regulation)**

Supervisory experience gained since the adoption of the ECB Regulation indicates that outflow rates for trade finance off-balance sheet related products, as referred to in Article 429 and Annex I of the CRR, may be lower than 5%, also during times of stress. The ECB therefore considers it necessary to introduce greater flexibility with regard to the determination of these outflow rates for the purposes of Article 23(2) of Commission Delegated Regulation (EU) 2015/61. Therefore, the specification of a standardised 5% outflow rate has been removed from the ECB Regulation. Instead, for trade finance off-balance sheet related products, the ECB will determine outflow rates by either accepting the outflow rates applied by credit institutions or by setting an outflow rate of up to 5% (see Section 4.1.1.7 for further explanation).

- **Outflows from stable retail deposits (Articles 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61 and Article 13 of the ECB Regulation)**

The general policy on the discretion for competent authorities to authorise credit institutions to apply an outflow rate of 3% to stable retail deposits covered by a deposit guarantee scheme (DGS) in accordance with Directive 2014/49/EU¹⁹ up to a maximum level of €100,000 has been removed from the ECB Regulation. Instead, it has been included in Section III of the ECB Guide, which sets out the ECB's general stance on the exercise of O&Ds where further action or assessment is required (see Section 4.2 for further explanation).

- **Identification of major stock indices in a Member State or in a third country (Article 12(1)(c) of Commission Delegated Regulation (EU) 2015/61)**

A general policy has been developed relating to the identification of indices which may qualify as major stock indices for the purpose of determining the scope of shares that could qualify as Level 2B assets pursuant to Article 12(1)(c) of Commission Delegated Regulation (EU) 2015/61. In this respect, a reference is made to Implementing Regulation (EU) 2016/1646 laying down implementing technical standards with regard to main indices and recognised exchanges. In addition to the indices listed in Annex I of Implementing Regulation (EU) 2016/1646, the following indices could qualify as a major stock index: (i) major stock indices identified as such for the purposes of Article 12(1)(c) of Commission Delegated Regulation (EU) 2015/61 by the competent authority of a Member State or the relevant public authority in a third country, and (ii) any other major stock indices which comprise leading companies in the relevant jurisdiction.

- **Required stable funding factors for off-balance sheet exposures (Article 428p(10) of the CRR)**

A general policy has been developed in relation to the determination of RSF factors to be applied to off-balance-sheet exposures not referred to anywhere else in Title IV of Part Six of the CRR. In view of the heterogeneity of the products and services that would fall under such off-balance sheet exposures, the RSF factors to be applied have been linked to the outflow rates applied under Article 23 of Commission Delegated Regulation (EU) 2015/61 in the LCR. The ECB may determine different required stable funding factors, as appropriate.

- **Determination of the term of encumbrance for assets that have been segregated (Article 428q(2) of the CRR)**

A general policy has been developed in relation to the determination of the term of encumbrance to be assumed for assets that have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012. Specifically, where assets have been segregated and credit institutions are not able to freely dispose of them, the assets will be considered as encumbered for the period corresponding to the term of

¹⁹ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.06.2014, p. 149).

the liabilities to the credit institutions' customers to whom that segregation requirement relates.

- **Treatment of required central bank reserves (Article 428r(2) of the CRR)**

Owing to the exceptional circumstances of the COVID-19 pandemic, the discretion referred to in Article 428r(2) of the CRR has not yet been exercised. However, the ECB will consider doing so once the situation normalises.

- **Discretions related to the simplified net stable funding requirement (Articles 428aq(10), 428ar(2) and 428as(2) of the CRR)**

Chapter 7 of Title IV of Part Six of the CRR relating to the simplified net stable funding requirement includes some discretions which mirror those included under Chapter 4 of Title IV of Part Six of the CRR:

- Article 428aq(10) of the CRR – required stable funding factors for off-balance sheet exposures;
- Article 428ar(2) of the CRR – determination of the term of encumbrance for assets that have been segregated;
- Article 428as(2) of the CRR – treatment of required central bank reserves.

For all of the above discretions, credit institutions to which the ECB has granted permission to apply the simplified net stable funding requirement referred to in Chapter 5 of Title IV of Part Six of the CRR will follow the approach as specified for the discretions referred to in Chapter 4 of Title IV of Part Six of the CRR. This reflects the fact that there is currently no evidence that would justify specifying a policy which differentiates between small and non-complex institutions subject to the application of the simplified net stable funding requirement and those institutions which will need to apply the fully fledged net stable funding requirement.

- **Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items (Article 471(1) of the CRR)**

The general policy in relation to the exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items has been removed from the ECB Regulation, as the underlying discretion has also been removed from the CRR.

4.1.3 Amendments to the ECB Recommendation

- **Part II, Section IIa of the ECB Recommendation: reduction of own funds: (Article 78(1) of the CRR)**

A new article is included in the amending ECB Recommendation on the exercise of the discretion granted to the competent authorities by Article 78(1)(b) of the CRR to determine the margin by which the own funds and eligible liabilities of a credit institution applying for a reduction of own funds will exceed the requirements

prescribed in the CRR, the CRD and the Bank Recovery and Resolution Directive (BRRD)²⁰.

The policy provided also sets out the conditions that the NCAs should take into account when considering whether to grant a general prior permission to credit institutions to reduce own funds, in accordance with the second sub-paragraph of Article 78(1) of the CRR.

A detailed policy rationale explaining the specific LSI policy developed for this option is provided in Section 4.3 of this Memorandum.

- **Part II, Section V of the ECB Recommendation: liquidity outflows (Article 420(2) of the CRR)**

Section V of Part II of the ECB Recommendation has been deleted, in accordance with the deletion of the respective policy for SIs from the ECB Regulation (see Section 4.1.2 of this Memorandum).

- **Annex to the ECB Recommendation**

The Annex to the amending Recommendation has been updated. It now includes cross-references to the respective paragraphs in the revised ECB Guide that set out the newly introduced policies implementing the O&Ds included in the new CRR/CRD package, for which the recommended policy for LSIs is the same as that for SIs. The updated Annex also reflects the respective changes to the numbering of the paragraphs in the revised ECB Guide.

4.1.4 Amendments to the ECB Guideline

- **Article 5 of the ECB Guideline: hedging sets (Article 282(6) of the CRR)**

The policy guidance in the original ECB Guideline with regard to the calculation of the transactions set out in Article 282(6) of the CRR has been deleted. This reflects the respective amendments to the CRR, which delete paragraph 6 of Article 282.

- **Article 6 of the ECB Guideline: exemptions from large exposures limits (Article 400(2) of the CRR)**

The article has been amended with regard to the policy for EU and third-country intragroup exposures under Article 400(2)(c) of the CRR. The scope of the policy allowing exemptions without prior supervisory assessment under Article 400(2)(c) will cover only intragroup exposures to entities located within the European Union. This will be implemented in paragraph (c) of the new Article 6 of the ECB Guideline. Intragroup exposures involving a third country will require a case-by-case prior assessment, as now provided for in the ECB Recommendation, via cross-reference

²⁰ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

to the ECB Guide. In addition, the wording of paragraphs (c) and (d) of the new Article 6 of the ECB Guideline reflect the respective amendments in the ECB Regulation, allowing that, in addition to the full exemption currently available, credit institutions that comply with the relevant criteria by observing a quantitative limit on the value of the relevant exposures are able to make use of a partial exemption.

A detailed explanation of the rationale for the new policy approach for both SIs and LSIs is provided in Section 4.2.1 of this Memorandum.

The amendment to Article 6 of the ECB Guideline mirrors the content of the respective Article 9 of the ECB Regulation so as to ensure a consistent supervisory approach for such exemptions. This is with a view to maintaining a level playing field and fostering a coherent approach in the banking union as a whole with regard to the treatment of third countries.

- **Article 7 of the ECB Guideline: outflows from stable retail deposits (Articles 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61 and Article 13 of the ECB Regulation)**

The general specification on the discretion for competent authorities to authorise credit institutions to apply an outflow rate of 3% to stable retail deposits covered by a DGS in accordance with Directive 2014/49/EU up to a maximum level of €100,000 has been removed from the ECB Guideline. The ECB's position towards this option has been set out in Section III of the of the ECB Guide (see Section 4.2 for further explanation).

- **Articles 7a to 7f of the ECB Guideline: liquidity**

The ECB Guideline has been amended to include further paragraphs implementing the policies developed for liquidity requirements following the introduction of the NSFR as a prudential requirement under the CRR. The changes mirror the content included in Article 12 of Section II of Chapter IV of the ECB Regulation so as to ensure the same policies apply to SIs and LSIs. An explanation of the rationale underpinning the supervisory policies included in this article is set out in Section 4.1.2 of this Memorandum.

- **Article 8 of the ECB Guideline: exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items (Article 471(1) of the CRR)**

The policy guidance in the original ECB Guideline with regard to the exemption from deduction of equity holdings in insurance companies from CET1 items has been deleted to reflect the respective amendments to the CRR, which replace the content of paragraph 1 of Article 471, removing the related discretion granted to the competent authorities.

4.2 Detailed rationale for selected amendments

4.2.1 Proposed changes to the ECB's policies for exempting intragroup large exposures from the large exposure limit

The ECB proposes to introduce two changes to its policy on exempting intragroup exposures from the large exposures limit in accordance with Article 400(2)(c) of the CRR.

- **Case-by-case prior supervisory assessment of exemptions of intragroup exposures to entities located in third countries**

It is proposed that in cases of large exposures where third-country entities are involved (i.e. entities not located in the EU), the current policy of allowing a full exemption without first asking for supervisory approval, by directly applying the ECB Regulation based on the relevant criteria, should be replaced by an ex ante supervisory assessment, after which a full, partial or no exemption would be granted.

The proposed change is intended to complement the ECB's supervisory expectations on booking models that were published in 2018. In line with the EBA opinion on issues related to the departure of the United Kingdom from the European Union²¹, the ECB pays special attention to large exposures or concentration risk to some counterparties resulting from systematic use of back-to-back booking practices between different entities in consolidated banking groups. This is a prudential concern which was not of the same importance when the ECB Regulation and the ECB Guide were first introduced.

Moving to case-by-case ex ante supervisory approval of exemptions of third-country intragroup exposures from the large exposures limit is intended to reduce the risk that banks, which in some cases may rely heavily on the intragroup large exposure exemption, could be required to unwind intragroup transactions on account of compliance shortcomings revealed through ex post supervisory scrutiny.

To give effect to this change, the ECB intends to limit the scope of Article 9(3) of the ECB Regulation to intragroup exposures to entities located within the European Union.

The ECB intends to set out in the ECB Guide the process according to which institutions may apply to exempt exposures to group entities located in third countries. The ECB Guide will contain a non-exhaustive list of factors that the ECB may take into account, as appropriate, when assessing such applications, in addition to the generally applicable factors reflected in paragraphs 1 and 2 of Annex I to the ECB Regulation. These factors include, inter alia, whether the booking practices of the credit institution are aligned with its risk management strategy and risk control mechanisms at both individual and consolidated level.

²¹ "Opinion of the European Banking Authority on issues related to the departure of the United Kingdom from the European Union (EBA/Op/2017/12)", European Banking Authority, October 2017.

The ECB may also grant partial waivers in cases where institutions apply specifying a certain limit or can meet the relevant criteria only by observing a quantitative limit on the value of their exposures to other third-country entities in their groups.²² Partial exemptions will be granted up to the quantitative limit for which the relevant conditions can be met, following the prior supervisory assessment.

Credit institutions which have intragroup exposures to entities in third countries that are already fully exempted from the large exposure limit in accordance with Article 9(3) of the ECB Regulation would not be expected to submit applications for exemption of these exposures from the large exposures limit. Instead, the ECB would reconfirm institutions' compliance with the relevant criteria, taking into consideration the additional factors set out in the revised version of the ECB Guide, as appropriate, as part of its regular supervisory programme.

New intragroup exposures – specifically, exposures to third-country group entities to which the institution has not previously incurred an exposure that was exempted from the large exposures limit – would be subject to the new case-by-case prior supervisory assessment established in the ECB Guide.

In general, the ECB expects credit institutions to notify it of any material change in circumstances that would affect the credit institution's fulfilment of the relevant conditions. In accordance with Article 9(6) of the ECB Regulation, the ECB may verify credit institutions' assessment of whether they meet the relevant criteria at any time.

- **Clarifying the procedure for the granting of partial exemptions of intra-EU intragroup exposures from the large exposures limit**

The ECB is aware that there are circumstances in which institutions can comply with the criteria specified in Article 400(3) of the CRR, as further specified in paragraphs 1 and 2 of Annex I to the ECB Regulation, only where they observe a quantitative limit on the value for their exposures to other entities within their groups. In such circumstances, a partial exemption of intragroup exposures from the large exposures limit may be more proportionate than no exemption at all.

The current Article 9(3) of the ECB Regulation exercises the discretion granted by Article 400(2)(c) of the CRR only for full exemption of intragroup exposures from the large exposures limit. Article 9(3) of the ECB Regulation permits institutions to make use of this exemption without first applying for permission, provided that the institution complies with the criteria in view of a full exemption.

To make use of a partial exemption – an option that is foreseen in Article 400(2) of the CRR – it is necessary for the institution to first ask for approval, and for the ECB to take an individual case-by-case supervisory decision, following an ex ante assessment of the institution's compliance with the relevant criteria in view of the

²² Article 400(2) of the CRR provides that competent authorities may exempt certain categories of exposure from the large exposures limit either fully or partially.

requested partial exemption. This is the approach that was approved by the Supervisory Board in a past decision on partial exemptions.

The ECB is of the view that the revised Article 9(3) of the ECB Regulation should also allow institutions to make use of a partial exemption for their intra-EU intragroup exposures without first asking for supervisory approval. This is relevant for those cases where an institution would not be able to comply with the requirements in the case of a full exemption, but can comply with the requirements by observing a quantitative limit on the value of its exposures to other entities in its group.

To give effect to this change, the ECB proposes to amend Article 9(3) of the ECB Regulation to clarify that exposures may be partially exempted from the large exposures limits. In such case, the exposures will be exempted up to the quantitative limit for which the institution is able to comply with the relevant criteria.

When verifying a credit institution's assessment of compliance with the relevant criteria, the ECB will take into consideration (i) whether the exposures have been exempted in full or in part from the large exposures limit; and (ii) in the case of a partial exemption, the level of the quantitative limit up to which, according to the credit institution, the relevant criteria are met.

Furthermore, an editorial change has been introduced in Annex 1 to provide further clarity on one of the specifications.

4.2.2 Proposed changes to the ECB's policies on liquidity

- **Article 8(3) of the CRR – waivers of liquidity requirements at the cross-border level**

Two changes have been introduced in Section II, Chapter 1 of the ECB Guide in relation to Article 8(3) of the CRR concerning waivers of liquidity requirements where institutions of the single liquidity sub-group are authorised in several Member States (waivers of liquidity requirements at the cross-border level).

The first change relates to waivers of the LCR requirement at the cross-border level. The original version of the ECB Guide specified that, with respect to Article 8(3)(b) of the CRR and the distribution of amounts, and the location and ownership of the required liquid assets to be held within a single liquidity sub-group, the ECB would take account of whether significant sub-entities or significant groups of sub-entities in one Member State maintain in that Member State an amount of high-quality liquid assets (HQLA) which is at least equal to the lower of (a) and (b):

(a) the percentage of HQLA required at the ultimate parent company level;

(b) 75% of the level of HQLA that would be required in order to comply with the fully phased-in LCR requirements at the solo or sub-consolidated level, in accordance with Commission Delegated Regulation (EU) 2015/61.

In the revised version of the ECB Guide, the reference to the percentage of HQLA required at the ultimate parent company level – that is, point (a) above – has been deleted. This specification captured the fact that the LCR requirement was phased-in with gradually increasing minimum levels between October 2015 and January 2018 and, thus, the percentage of HQLA required at the ultimate parent company level could, for a limited period of time after the publication of the original version of the ECB Guide, have been lower than the level specified in point (b) above, i.e. 75%.

In addition, a number of textual amendments have been introduced in the revised version of the ECB Guide to clarify that the amount of HQLA that is to be maintained at the level of a significant sub-entity or significant group of sub-entities will always be substantiated on a case-by-case basis, in the light of the individual prudential situation of the credit institution.

The original version of the ECB Guide further stated that the ECB intended to reassess the specifications under point (b) above at the latest in 2018, in particular in order to set the lower bound at 50%, in the light of supervisory experience and the development of the institutional mechanisms in place within the banking union to ensure the safety and freedom of cross-border intragroup liquidity flows. This statement has been deleted in the revised version of the ECB Guide.

The second change in relation to Article 8(3) of the CRR concerns waivers of the NSFR requirement at the cross-border level. The revised version of the ECB Guide specifies that, with respect to Article 8(3)(b) of the CRR, the ECB will take into account whether significant sub-entities or significant groups of sub-entities in one Member State maintain in that Member State an adequate amount of available stable funding. In common with the revised specifications for waivers of the LCR requirement at the cross-border level, the revised version of the ECB Guide states that an indicative amount of 75% of the level of available stable funding that would be required in order to comply with the NSFR requirement at the solo or sub-consolidated level, in accordance Article 413(1) of the CRR, as further specified under Title IV of Part Six of the CRR, would be deemed, in principle, adequate for these purposes.

- **Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61**

In Article 13 of the current ECB Regulation, the ECB communicated its general intent to make use of the discretion provided for in Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61. This discretion enables competent authorities to authorise credit institutions to apply an outflow rate of 3% to stable retail deposits covered by a DGS in accordance with Directive 2014/49/EU up to a maximum level of €100,000.

However, certain factors have impeded the practical application of this discretion. First, not all DGSs in the scope of this provision currently meet the criteria established in Article 24(4) of Commission Delegated Regulation (EU) 2015/61. Second, as specified in Article 24(5) of Commission Delegated Regulation (EU) 2015/61, for the discretion to apply, the ECB must submit a reasoned notification to the European Commission, which should include evidence that the run-off rates for

stable retail deposits would be below 3% during any stress period experienced consistent with the scenarios referred to in Article 5 of Commission Delegated Regulation (EU) 2015/61. Further evidence and considerations are necessary to demonstrate that the outflow rates for stable retail deposits covered by a specific DGS would be below 3% during any such stress period.

The ECB remains generally supportive of the application of this discretion, but deems that its application is conditional on the evidence gathered on the respective outflow rates, as well as on the relevant DGS complying with the criteria in Article 24(4). The ECB will carefully monitor related regulatory developments and work undertaken by EU authorities that is facilitating the practical application of this provision, and will reconsider the application of the discretion in due time.

Based on the above, the current Article 13 of the ECB Regulation has been deleted and in turn included in the ECB's stance in relation to this discretion in Section III of the ECB Guide, which sets out the ECB's general stance on the exercise of O&Ds where further action or assessment is required.

- **Article 24(6) of Commission Delegated Regulation (EU) 2015/61**

Article 24(6) of Commission Delegated Regulation (EU) 2015/61 provides competent authorities with the discretion to allow credit institutions to apply an outflow rate of 3% to stable retail deposits covered by an equivalent DGS in a third country if the national law of the third country allows such treatment.

It is proposed to make clear in the ECB Guide that the ECB intends to authorise this discretion only where (i) the application of an outflow rate of 3% has been granted to deposits covered by a DGS in the EU, and (ii) the DGS in the third country is assessed as equivalent to the schemes listed in Article 24(1) of Commission Delegated Regulation (EU) 2015/61 and meets the conditions listed in Article 24(4)(a) to (c) of Commission Delegated Regulation (EU) 2015/61. Furthermore, it is proposed to move the relevant paragraph in the ECB Guide from Section II to Section III.

The purpose of this amendment is to ensure a consistent treatment of deposits covered by EU and equivalent third-country DGSs. In particular, it is intended to ensure that stable retail deposits covered by an equivalent third-country DGS are assigned a 3% outflow rate only after the ECB has sufficient evidence that run-off rates for stable retail deposits covered by a DGS in the EU would be below 3% during any relevant stress period.

- **Article 26 of Commission Delegated Regulation (EU) 2015/61**

According to Article 26 of Commission Delegated Regulation (EU) 2015/61, credit institutions may calculate the liquidity outflow net of an interdependent inflow provided that certain conditions are met and subject to prior approval from the competent authority. To reflect amendments to Commission Delegated Regulation (EU) 2015/61 introduced by Commission Delegated Regulation (EU) 2018/1620, three amendments have been introduced into the ECB's policy guidance on Article 26 of Commission Delegated Regulation (EU) 2015/61.

First, a more general requirement has been included according to which, in the event of a time lag between inflows and outflows (where inflows arise before outflows), the funds from the inflows should be segregated and, where the inflow arises before the calculation date of the LCR, should not be considered anywhere else in the calculation of the LCR (e.g. as a high-quality liquid asset).

Second, it is clarified that Article 26 of Commission Delegated Regulation (EU) 2015/61 could, in principle, be applied in the context of debit and credit balances related to accounts that are subject to a notional cash pooling agreement. However, this would be subject to compliance with additional conditions further specified in the ECB's policy guidance.

Third, to enable the ECB to fulfil its obligation to notify the EBA of the credit institutions that benefit from the netting of outflows with interdependent inflows, credit institutions which intend to apply for the application of this discretion will be required to provide information on the amount of outflows and inflows to be netted as well as the impact on the LCR if the ECB were to allow the credit institution to apply the treatment allowed under this discretion.

4.3 O&Ds requiring an LSI-specific policy

- **Part II, Section IIa of the ECB Recommendation: reduction of own funds: (Article 78(1) of the CRR)**

The policy developed and included in the amending ECB Recommendation for LSIs with regard to the determination of the excess margin required for granting permission to reduce own funds follows in substance the same rationale as the policy developed for SIs; however, there are certain adjustments to account for the specificities of the LSI sector. More specifically, the wording of the dedicated article in the amending ECB Recommendation will omit the references to Articles 92a and 92b of the CRR and to the leverage ratio buffer set out in Article 92(1a) of the CRR, as these references relate to requirements applicable to G-SIIs and are thus not relevant to LSIs. Second, a reference to NRA will be added so as to respect the allocation of competences between the NRAs and the SRB under the SRM Regulation.²³

The inclusion of P2G in the assessment of the excess margin is based on the grounds that the P2G is institution specific and determined on the basis of a sound methodology. It would therefore not be reasonable for supervisors to expect institutions to adhere to the P2G in the SREP decision and at the same time to allow the reduction of own funds to a level below the P2G. To maintain a level playing field, the content of the LSI-specific policy follows the inclusion of P2G in the considerations for the determination of the margin, in particular given that the

²³ See Article 7(2) and (3) of the SRM Regulation.

amendments to the CRD²⁴ formally introduce the P2G and both the SI and LSI SREP methodologies are consistent in terms of P2G determination.

The policy provided also sets out the conditions that the NCAs should take into account when considering whether to grant a general prior permission to credit institutions to reduce own funds, in accordance with the second sub-paragraph of Article 78(1) of the CRR.

²⁴ See Article 104b of Directive (EU) 2019/878.

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For specific terminology please refer to the [SSM glossary](#) (English only).