

Template for comments

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

Institution/Company

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General comments

Created in 2016, the Pan-European Conglomerate Club (PCC) is a network of main bancassurances in Europe (7 countries) and it regularly exchanges with different regulatory and supervisory authorities, providing experience and expertise on financial conglomerates in a constructive dialogue.

As such, the PCC welcomes the opportunity to provide feedback on the ECB's consultation regarding its approach to options and discretions under EU law, especially regarding the changes ECB is aiming to introduce to the application of Article 49.1 provisions. The PCC appreciates and values the ECB's efforts to produce consistent options and discretions to foster a level playing field in the euro area. However it opposes the ECB's current proposal to systematically impose on all conglomerate groups the inclusion of restricted Tier 1 (= Additional Tier 1 for insurance companies), Tier 2 and Tier 3 capital instruments in the treatment of the Danish compromise. This would mean for many groups a significant change from the current framework and lead to an unjustified and questionable increase in the consumption of CET1.

We have two main remarks to support this view, which are detailed in the corresponding section entitled Comments on the ECB Guide:

- from a literal perspective, the PCC's view is based on the analysis of Regulation (EU) No 575/2013.
- the ECB proposal goes beyond this intention of the legislator when introducing the Danish compromise.

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ECB Guide on Options and Discretions under Union law

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline: midnight CET on 10 January

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
2	Section II, Chapter 2, No. 5	28	Deletion	Created in 2016, the Pan-European Conglomerate Club (PCC) is a network of main bancassurances in Europe (7 countries) and it regularly exchanges with different regulatory and supervisory authorities, providing experience and expertise on financial conglomerates in a constructive dialogue. As such, the PCC welcomes the opportunity to provide feedback on the ECB's consultation regarding its approach to options and discretions under EU law, especially regarding the changes ECB is aiming to introduce to the application of Article 49.1 provisions. The PCC appreciates and values the ECB's efforts to produce consistent options and discretions to foster a level playing field in the euro area. However it opposes the ECB's current proposal to systematically impose on all conglomerate groups the inclusion of restricted Tier 1 (= Additional Tier 1 for insurance companies) , Tier 2 and Tier 3 capital instruments in the treatment of the Danish compromise. This would mean for many groups a significant change from the current framework and lead to an unjustified and questionable increase in the consumption of CET1. We have two main remarks to support this view : 1. From a literal perspective, the PCC's view is based on the analysis of Regulation (EU) No 575/2013. 2. The ECB proposal goes beyond this intention of the legislator when introducing the Danish compromise. (.../...)	In summary, the RT1, Tier 2 and Tier 3 capital have not to be included in the treatment of the Danish compromise if we follow the form and the substance of the provision of Article 49.1 of the CRR. It is worth noting here that most supervisors have authorized the practice in this form which must remain applicable in a consistent manner over time according to CRR. There have been one or two recent injections from the ECB during new applications of the Danish compromise that went in a different direction and we had already reacted in 2020. Nowadays, the harmonization desired by the ECB is legitimate but is not at this stage suggested in a consistent direction with the form and substance of the regulation. It should be done the other way around by regularizing only these two or three cases (out of 15) to bring them back to the spirit of the CRR and the content of Article 49.1.		Publish

2	Section II, Chapter 2, No. 5	28	Deletion	1. From a literal perspective, the PCC's view is based on the analysis of Regulation (EU) No 575/2013. <u>A. First, in our view, Article 49(1) only concerns Common Tier 1 instruments while Additional Tier 1/Tier 2/Tier 3 capital are subject to a separate treatment.</u> It should be recalled that Article 49.1 is in a section specifically addressing "Exemptions and alternatives to the deduction of Common Equity Tier 1 items." In addition, the alternative treatment laid down in article 49 is de facto limited to CET 1 instruments, as: - RT1, Tier 2 and Tier 3 are required to be deducted respectively from Additional Tier 1 and Tier 2 at banking level (Articles 56 and 66, which do not refer to Article 49 nor an alternative treatment). - Article 49 takes effect only on CET1 (as defined in Article 50); indeed additional Tier 1 capital (as defined in Article 61) and Tier 2 capital (as defined in Article 71) the CRR does not consider effect of Article 49, on the contrary, it clearly refers respectively to Article 56 and 66 requiring to deduct RT1 and Tier 2. Thus we consider the extension of the alternative treatment laid down in Article 49 to RT1 and Tier 2 as not compliant with CRR. (.../...)	We are calling for supervisors and supervisory practices to continue to stick to the spirit that guided the implementation of the Danish Compromise. This was built on technical considerations that were debated at length and regularly reconfirmed. With the new ECB measure, the framework would become illogical/unfounded (there is no diversification provided by subordinated instruments) and it would raise a political issue relating to the enforcement of EU law and the powers attribution.	Bilger, Michel	Publish
3	Section II, Chapter 2, No. 5	28	Deletion	<u>B. Secondly Article 49 states that the application of the Danish Compromise is conditioned by the permission by the competent authorities of a choice of banks and does not mention any mandatory requirement in that respect.</u> Our reading of the text supported by the legal analysis carried out for the French Banking Federation (FBF) is as follows: The ECB may allow institutions to apply the Article 49 exemption on capital instruments proposed by banks, but it cannot force them in any way not to deduct, especially on a global basis (CET1 + RT1 + Tier 2 + Tier 3) or nothing. Conversely, for AT1 and T2, the deduction is mandatory as per Articles 56d and 66d. There is therefore no possibility for the institution to opt for non-deduction/weighting, nor for the ECB to grant it. C. The method chosen by the institution must be consistent over the long term (Article 49.1). Almost all national authorities have accepted the request of banks that initiated their desired treatment dedicated to CET1 by official letters. These provisions were then validated by the ECB, which took over these prerogatives in 2014. The PCC does not see grounds for a modification of the treatment as changing the application of the Danish compromise would contradict this provision. (.../...)	See above	Bilger, Michel	Publish

4	Section II, Chapter 2, No. 5	28	Deletion	2.The ECB proposal goes beyond this intention of the legislator when introducing the Danish compromise. From a broader perspective, it is important to refer to the history of the discussions and negotiations that led to the writing of the Article in question to clarify the intentions and the spirit of the text. The CRR introduced on 1 January 2014 a new highest capital category called CET1, corresponding to the bank's core capital only excluding any debt securities. Insurance participations (in the meaning of equity holdings), which until 2012 were only deducted from Tier 2 (followed in some countries by a hybrid method for a short period of two years by a deduction on Tier 1 & Tier 2), were going to be subject to a much more punitive prudential treatment with the new Basel Committee standard. To account for the diversification brought by the activities of the insurance subsidiary to the resilience of the banking group, as underlined by solid studies, an appropriate measure now known as the Danish Compromise was introduced. The idea was clearly to reflect the proven robustness of bancassurances business model on this CET1, the new reference ratio followed by supervisors and financial markets. (.../...)	See above	Bilger, Michel	Publish
5	Section II, Chapter 2, No. 5	28	Deletion	On this basis, it should be noted that never could the demand of the banks but also of the regulators have encouraged them to extend the specific treatment to the RT1, Tier 2 and Tier 3 when the CRR article was drafted, this for concrete reasons of that time: this would have made the desired treatment almost impossible. Indeed, as until then, the banks had deducted for a long time the value of their insurance holdings according to the so-called total deduction method. As per this method, insurance holdings were deducted from their Tier 2 own funds and they found themselves at the time of the entry into force of the CRR/Basel 3 with a very large stock of Tier 2 which had become prudentially useless (transfer of the requirement on the CET1). Consequently, conglomerates favored a funding strategy based on centralizing most of external issuances at Group's head level and on up-streaming or down-streaming capital within the group when needed. In this regard, the prudential treatment based on the deduction method when applied to debt instruments is consistent with the replication of intra group transactions externally. And extending the risk weighted treatment to AT1 & Tier 2 would simply have erased in 2013 the positive impact of the treatment itself for the banks. As a result, no bank, but also no regulator or supervisor (at the time national) even mentioned such an approach. The text was therefore written and understood on the basis of a treatment exclusively relating to CET1. (.../...)	See above	Bilger, Michel	Publish

6	Section II, Chapter 2, No. 5	28	Deletion	The banks thus filed their authorization files for Article 49.1 based on this common understanding, therefore exclusively on CET1. At no time, during the multiple discussions, analyses and impact simulations that followed with the national and European authorities, was there any question of also taking into account any RT1, Tier 2 or Tier 3. This scenario was never mentioned (at least for the vast majority of the European conglomerates) as a possible alternative or worse as a mandatory concept in the form of an "all own funds or nothing" imposed on banks obtaining the exemption from Article 49.1 as the OND guide seems to suggest.	See above	Bilger, Michel	Publish
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ECB Regulation on Options and Discretions under Union law

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ECB Guideline on Options and Discretions under Union law

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ECB Recommendation on Options and Discretions under Union law

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