

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

Austrian Federal Economic Chamber, Division Bank and Insurance

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General comments

The ECB's views also have a certain signal effect for NCAs, which is why the impact on LSIs should also be taken into account.

Therefore, in addition to our other remarks, we would like to draw attention to the new provision in Chapter 1 para. 15, according to which - if justified in the opinion of the supervisor - mandatory application of IFRS can be ordered in individual cases, although only n-GAAP would be provided for under national law. On the one hand, such an approach would be highly disproportionate. On the other hand, national (accounting) regulations should be fully respected and should not (be able to) be overridden by regulatory considerations.

Template for comments

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

ECB Guide on Options and Discretions under Union law

Please enter all your feedback in this list.

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
1	Several places in the Guide (for example, Fn. 16 on page 8)	8	Amendment	On several places in the Guide, the “old” reporting ITS is cited (Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1). However, this “old” reporting ITS was replaced by the “new” reporting ITS (Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014).		Rudorfer, Franz	Publish

2	Chapter 1, para 15	24	Deletion	Deletion of the new subsection "However, the ECB may consider exercising the option set out in Article 24(2) on a case-by-case basis, if duly justified from a supervisory perspective."	Should be removed as it's highly inappropriate to require banks to apply International Accounting Standards if national law only requires the use of n-GAAP. National laws should be fully respected and mustn't be undermined by supervisory perspectives.	Rudorfer, Franz	Publish
3	Chapter 3, para 3	34	Clarification	According to the Draft Guide, any referenced instrument must be designated as a trading book instrument "when it is first recognised on the books of an institution". Are we correct in understanding that only new positions in such instruments, recognised on the institutions' books from the date of application of the amended Article 104 CRR, shall be considered, and existing positions will continue it's current classification?	In our view, only newly recognised positions from the date of application of the amended Article 104 CRR shall be generally designated to the trading book.	Rudorfer, Franz	Publish
4	Chapter 3, para 3	34	Clarification	Please clarify whether listed equities that are participations pursuant to the applicable accounting standard are generally considered to be classified as trading book positions? If yes, please clarify if listed equities that are eligible for the deduction exemption under Article 49(2) or (3) CRR or falling under the grandfathering provision of Article 495a(3) CRR do generally not require ECB approval to be included in the banking book.	We consider these provisions to be lex specialis, taking precedence over the requirements outlined in Article 104 CRR (as amended).	Rudorfer, Franz	Publish
5	Chapter 3, para 3	34	Amendment	In order to align the text in the Guide with the art 104(4) CRR as well as with the text in the Guide itself in the point (v), we suggest that instead of "(iii) how the institution ensures that the positions included in the request are neither held with trading intent nor used for hedging purposes in the trading book" the texts should be "(iii) how the institution ensures that the positions included in the request are neither held with trading intent nor does it hedge positions held with trading intent".	Alignement with the CRR text.	Rudorfer, Franz	Publish

6	Chapter 3	35 ,37		We are not aware that there would be a requirement in the CRR or related secondary regulation which would impose the separation of the units for non-trading book management that are separate from units responsible for trading book management. If this condition is added in order to manage potential conflicts of interest that could occur if the trading book and non-trading book are managed by the same unit then we propose to change this condition from point (vii) on page 35 and point (v) on page 37 to: "how the institution ensures that potential conflict of interest in the management of the relevant positions is handled;" Also please note that in case if the credit institution does not have a trading book and is requesting (upfront) an approval to assign some of the positions listed in art 104(2), points (d) to (i) CRR to be assigned to a non-trading book, the credit institution would not even have an unit responsible for trading book management.	Supervisory expectation not covered by applicable legislation	Rudorfer, Franz	Publish
7	Chapter 3	42-44		Since SRT transactions are costly and require a substantial amount of preparation effort/time and in order to ensure transparency towards supervised institutions, we would kindly highly recommend and appreciate if: a) In cases where the SRT is assessed under Article 244(2) or 245(2) of the CRR and the ECB intends to adopt a formal decision objecting to the SRT in accordance with Article 244(2) or 245(2), as applicable, that this formal decision has to be taken and is communicated to the supervised institutions prior to the expected closing date; b) In cases where the ECB does not object to the SRT, the supervised institution is informed of the mentioned "operational act"/"non-objection" also prior to the expected closing date.	Clear and transparent communication process towards supervised institutions	Rudorfer, Franz	Publish

8	Chapter 4, para 3, point (iv)	57-58		Reference is made to the following item: "Stress scenarios should adequately cater for material idiosyncratic and systemic risks. In this context, the IPS should also consider (i) the extent to which internal spill-over effects between IPS entities resulting from potential support cases will exhaust the IPS support capacity, and (ii) how the IPS, when confronted with an extreme support case depleting its support capacity, would ensure that all its members and the IPS as a whole continue to comply with regulatory requirements." These additional specifications regarding the IPS stress test introduce unnecessary complexity and higher requirements, reducing the truthfulness and reliability of the results. The negative effects in a stress test are calculated across each and all institutions. The assessment of regulatory compliance of the IPS and its members should be kept in mind for analysing the stress test results but should not be part of the parametrisation of the stress scenario itself."	The provisions regarding the stress test across IPS is already sufficient. The wording "internal spill-over effects between IPS entities" and the link towards the regulatory compliance is unclear and should be deleted.	Rudorfer, Franz	Publish
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Public consultation on revisions to the ECB's policies concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB 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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