EUROPEAN CENTRAL BANK

BANKING SUPERVISION

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

ITALIAN BANKING ASSOCIATION

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General comments

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:

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
1	Section II Chapter 2 Paragraph 16	32	Amendment	The CRR3 introduces the possibility of a derogation from the "lower of the two requirements" criterion when calculating monirity interests. Namely, the competent authority may allow an institution to subtract either of the amounts referred to in Article 84(1) point (a)(i) or (ii), once that institution has demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level. In this regard, the draft ECB Guide envisages as a necessary condition that the provisions governing the instruments, owned by persons other than the undertakings included in the consolidation, include loss-absorption mechanisms that are automatically activated in the case of losses suffered by other undertakings included in the consolidation or if those undertakings are subject to write-down or conversion of their capital Instruments or eligible liabilities pursuant to Article 59 of the BRRD. The requirement that the provisions of an instrument should ensure the loss absorption of other affiliated undertakings is not realistic, notably in the case of CET1, and will never be met in practice, thus resulting in circumventing the choice of the EU legislator introducing this derogation. Moreover, the Level 1 text requires that the additional amount of minority interest shall be available to absorb losses at consolidated level. The condition envisaged in the draft ECB Guide seems to go beyond this, requiring that a subsidiary's shareholders shall automatically bear any losses incurred by any other undertakings included in the consolidation. To remain consistent with the Level 1 text, the conditions envisaged by the ECB should only require that appropriate and binding arrangements (not necessarily the provisions governing the instruments) are put in place, to ensure that minority interests are actually available to bear the losses incurred at consolidated level on a pro rata basis.	The requirement of the ECB draft Guide of automatic loss-absorption mechanisms, included in the provisions governing the instruments and covering any losses suffered by other undertakings, seems to go beyond the Level 1 text and would in practice make the CRR3 provision introducing the derogation ineffective.	ABI
2	Section II Chapter 3 Paragraph 3 point vii)	35	Deletion	Point vii) seems to require that, in all cases where a bank applies for a classification exemption under Article 104(4), the positions in scope shall be managed by a unit that does not manage TB positions. We would ask for deleting or amending this point as in our view a general and rigid requirement, of having units separated from TB trading desks for the management of all those positions for which a classification exemption is requested, appears disproportionate (provided that clear strategies and policies for the management of these positions shall be present).	Having any position to be exempted managed by a unit not managing trading positions is organizationally burdensome and the requirement appears not strictly grounded in Level 1 regulation.	ABI
3	Section II Chapter 3 Paragraph 3 point x)	36	Clarification	Point x) requires evidence that the position is not held with trading intent and does not hedge positions held with trading intent. Given that other points already require documentation illustrating policies and strategies, as well as the motivation for the inclusion in the non-trading book, it is not clear which kind of further evidence point x) refers to.	Clarification would be useful as to which kind of evidence point x) refers to (further to the documentation required under the other points).	ABI

4	Section II Chapter 3 Paragraph 6	41	Amendment	The EBC proposed approach requires, as an eligibility condition to apply the specific treatment for exposures incurred under legislative programmes laid down in Article 133(5), a loss risk reduction corresponding to the reduction in the risk weight. This seems not aligned with the Level 1 text, that only requires legislative programmes to provide "significant" subsidies or guarantees. In fact, the approach proposed by the ECB appears too strict and doesn't reflect the most common public/private partnership practices on private equity market, also considering that guarantees or other clauses directly reducing the risk of losses are used in case of debt exposures. Morever, in private equity transactions there are different criteria and terms to calculate losses, that should also be considered. Then, equity exposures eligible under the ECB approach can hardly be identified and the aim of the Art. 133 (5) would fade away. A different approach, more aligned with the private equity market practices, would be needed to identify the subsides that can be deemed "significant".	The proposed approach would severely limit the possibility to apply the specific treatment for exposures incurred under legislative programmes laid down in Article 133(5), and would therefore jeopardise the achievement of the objectives of the legislators in implementing this discretion, including to foster long-term equity investments.	ABI
5	Section II Chapter 3 Paragraph 6	41	Clarification	In the context of public/private partenership programs focused on private equity investments, some structures launched by public bodies (e.g multilateral development banks) propose different risk/ rewards structures to the investors depending on the classes of quotes/shares they invest in. Then, for example, investors in class A quotes/shares (which we assume to be the subjects indicated in par. 5 point a)) can take an higher risk in comparison to the investors in class B quotes/shares (which we assume to be banks or other private investors), as the repayment of class A quotes/shares is subordinated in case of losses. Diffferent should be also the terms to calculate the reduction in risk of losses, that should consider the value of a bank' s stake in comparision with the NAV value (in case of an exposure through an investment fund). Where used in the context of legislative programmes, such structures should be considered eligible for the purpose of the application of Article 133(5).	Equity exposures referred to structures with "different classes of risks/rewards" in the context of legislative programmes should be considered eligible for the purpose of the application of Article 133(5).	ABI
6	Section II Chapter 3 Paragraph 6	41	Amendment	In order to reduce the administrative burden for both banks and supervisors, ECB could introduce a solution allowing Competent Authority to grant an unique prior permission (for example on request of a public institution partecipating to the legislative program or of the vehicle where banks are investing in), which could directly apply to all banks underwriting exposures under the legislative program.	Introducing the option of a unique prior permission that is valid for all banks partecipating to a legislative program, would significantly reduce the administrative burden for both banks and supervisors, as well as provide certainty to the market and ensure level playing field among the banks.	ABI

7	Section II, Chapter 3, Paragraph 8, Significant Risk Transfer (SRT)	42-44	Amendment	In relation to the Significant Risk Transfer (SRT) tests, we support the replacement of the existing mechanical tests -and of the specific quantitative test proposed by the ECB which compares the reduction in capital requirements achieved by the originator with the share of credit risk losses transferred to third parties through the securitisation (ratio 1 and ratio 2) - with the principle-based approach (PBA) test recommended by the EBA in its report on the SRT published in 2020. The PBA test is more effective in measuring the significance of risk transfer, because it takes into account the lifetime expected loss (LTEL) and unexpected loss (UL) generated by the securitisation during the life of the transaction. Nevertheless, we suggest reviewing the quantification and the allocation of the losses proposed by the mentioned EBA Report. In particular: a) as estimating UL based on the initial portfolio is too punitive, especially if they are allocated to the end of the securitisation, we suggest calculating UL based on the actual portfolio at the moment in which they occur; b) as allocating UL in one quarter is too punitive and unrealistic, it would be preferable to spread the UL in at least four quarters; c) we also suggest reviewing backloaded and adverse scenario assumptions for the distribution of losses, for which, in particular, we would suggest: For transactions with sequential amortisation and for which only the evenly loaded scenario is applied: i) UL should be calculated proportionally to the amortisation plan, and not based on the initial portfolio amount only, and ii) UL should materialise proportionally, in the cash flow model, during the life of the transaction and not as an add-on to the last payment; iii) it is acceptable to assume that a higher portion of EL should materialize in the last periods of the transaction, however the time allocation of such losses shall always account for underlying portfolio amortisation profile; For transactions with pro-rata amortisation and for which the back-loaded scenario is applied, we suggest modifying such scenario requiring that 2/3 of LTEL plus UL occurs proportionally in the last 1/3 of the securitisation life, while 1/3 of LTEL plus UL occurs proportionally in the first 2/3 of the securitisation life. Also in this case, such LTEL and UL shall be calibrated during the life of the transaction accounting for the amortization profile.	Securitisation can allow banks to strengthen and increase their capability to provide more lending to the real economy, enabling them to free up regulatory capital which can be used to originate new loans, and it can contribute to a well-diversifying funding sources. The main impediments for originators and investors to securitise and invest in securitisations are represented by the excessive regulations and high capital requirements, which have created high transaction costs and barriers to entry in the securitisation market. One of the main aspects of the regulation that need to be improve is the SRT assessment process, which is too complex and burden and discourage the potential issuers, due to a lack of fluidity and the lack of predictability. Regarding in particular the SRT tests, the PBA test suggested by the EBA in its report on the SRT published in 2020 is more effective in measuring the significance of risk transfer, because it takes into account the LTEL and UL generated by the securitisation during the life of the transaction. Nevertheless, we suggest reviewing the quantification and the allocation of the losses proposed by the EBA. Given the overall process complexity and the general difficulties that market players are dealing with, we recommend that the securitisation SRT process will be properly defined at EU Level via L1/L2 (Delegated Act) rules, to improve the standardisation and homogeneity of the process across banks. Furthermore, it should also include rules about the process, and not only the SRT quantitative side.	ABI

				The SRT assessment process remains non-homogeneous and informal across the EU, with different Joint Supervisory Teams-JSTs (even within the same country) often imposing different requirements and restrictions on issuers. This is most notably seen through application of the SRT tests, where there is wide variability between use of the 2017 EBA SRT tests and the 2020 EBA SRT tests, and also variability regarding the implementation of and assumptions used within these tests. Further examples include the data required to be included in notification packages and the different scenarios to be run. It is therefore key that the SRT assessment process be formalised in legislation, and the level of unpredictability be removed. A clear and unique process defined by Level 1 or 2 level should remove ambiguity among the processes and recommendations defined by past guidelines or reports. While the EBA SRT report contains some positive proposals, in our view, it does not fully meet the purpose of facilitating the overall SRT assessment and recognition. 1. Preliminary notification: Feedback from Competent Authority (CA) on the preliminary notification (90-day prior) arrives too late, usually around the freeze period start (30-day prior), requiring banks to answer on the preliminary portfolio data, while preparing the final portfolio. It would be ideal to receive feedback from the CA within 1 month from the preliminary notification. 2. Changes during the freeze period: Banks experience too uncertainties / ambiguities regarding the definition of minor/material changes of the portfolio during the structuring period. According to the EBA guidance (ref. par. 187 EBA Report 2020/32) by no later than 2 months from the date on which the SRT assessment period commenced, the originator should submit final versions of (i) the SRT test calculations and (ii) the transaction’s draft documents. After the start of this ‘freeze period’, the securitisation structure and draft documents should not undergo any major changes without the CA’s prior consent. In our view the legislator should better clarify – by providing more details - what is considered a major change to the portfolio and to the securitisation structure during the freeze period as it would help reducing uncertainties / ambiguities		
				3. Structural features review: According to the EBA SRT report, where transactions contain either specific structural features without appropriate safeguards, or they contain novel structural features, the national competent authority (NCA) can normally require a structural features review for which it can request extending the review by two additional months. We are concerned that any minor deviation/variation in structure from a previously approved structure will determine some regulators to trigger such an additional 2-month review period potentially extending the overall assessment period length up to 5 months. Furthermore, where no structural features review is required, there should be no need for an additional 1-month post-execution assessment period. 4. For more simple/standardized transactions (i.e., potentially subject to the fast-track process), the requests from the CA are still too burdensome. 5. Too uncertainties and ambiguities regarding the definition of granularity of the portfolio (N) and the additional analysis required in case of non-granular portfolios: at the moment the Regulators are requesting additional concentration analysis also for securitisation with N>25 but neither the Securitisation Regulation (SECR) nor the EBA Report provide a clear definition of scale granularity above 25 and a clear definition of the requested concentration analysis. Independently of the regulatory fixes that might be decided, supervisors have ample margin of manoeuvre to reduce the timeline of the authorisation process for SRT transactions that comply with an agreed set of criteria. This could significantly reduce the time-to-market of a large number of transactions facilitating the participation of investors.		

8	Section II, Chapter 4, paragraph 5, point (3) (ii)	57	Amendment	In the draft ECB Guide, a new sentence has been added in the paragraph about the recognition of the institutional protection schemes (IPS) for prudential purposes (part in italics): "The governance structure of the IPS and the process for making decisions on support measures allow support to be provided in a timely manner. *In general, decision-making should take no more than a few weeks for capital measures and no more than a few days for liquidity measures after the support need has been identified.* ". We recommend the deletion of the proposed new sentence or an alternative formulation of the second half-sentence as follows: "… and an appropriate but significantly shorter period of time for liquidity measures…"	The current wording "in a timely manner" is considered sufficiently clear and appropriate, also in light of actual experience. The IPS internal regulations are designed accordingly. The proposed new sentence (although remaining vague), and especially the wording "no more than a few days" can lead to an unnecessary restriction of the flexibility of the IPS in cases where a longer period of time would be possible. In cases where action must be taken as quickly as possible - i.e. within "a few days" - the IPS will do so anyway.	ABI

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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

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	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter
1	Article 1 (2) - Transitional arrangements for ECAI credit assessments of institutions	Amendment	The draft Regulation provides for an extension until 1 July 2026 of the period in which institutions are allowed to continue using ECAI credit assessments in relation to institutions which incorporate assumptions of implicit government support. In order to ensure that there is an adequate availability of compliant ratings when the new provisions apply, further extension of the transitional period is deemed necessary. In particular, banks consider that ECB should be ready to extend further this deadline until minimum 3 large agencies provide compliant ratings, especially given that in CRR3 there is a possibility for a deadline until 31 December 2029 to comply with this requirement.	A longer transitional period would be needed in order to ensure that there is adequate availability of ratings compliant with the new requirement when the transitional period expires.	ABI

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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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