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**

French Banking Federation

### Contact person

**Mr/Ms**

**First name**

**Surname**

**Email address**

**Telephone number**

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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:**
**- 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 |
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| ID | Section | Page | Type of comment | Detailed comment | Concise statement as to why your comment should be taken on board | Name of commenter |
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| 1 | Section II, Chapter 2, Point 5 "Deduction of Insurance Holdings (Article 49(1) of the CRR)" | 27 | Deletion | As a result, these institutions have, since 1 January 2014, applied the following treatment to the relevant holdings in the insurance sector subsidiaries:<br><br>•Holdings of Insurance Subsidiary Equity benefit from the Danish Compromise and as a result have not been deducted from CET1 but instead risk-weighted in accordance with 49(4) CRR.<br><br>•Holdings of Insurance Subsidiary AT1/T2, outside the scope of the ACPR's permission, have continued to be deducted from the institution's respective AT1 and T2 items, in accordance with Articles 56(d) and 66(d) CRR, respectively.<br><br>However, in Section II Chapter 2 § 5 of the public consultation on revisions of the Guide on options and discretions, ECB has signalled its intention to require institutions to apply the Danish Compromise to Insurance Subsidiary AT1/T2.<br><br>We are of the view that competent authorities may not, pursuant to Article 49(1) CRR, require institutions to apply the Danish Compromise to Insurance Subsidiary AT1/T2, since, this treatment is merely an option available to institutions. In addition, requesting institutions to apply a different treatment for Insurance Subsidiary AT1/T2 than the one that has been applied consistently to those instruments since 1 January 2014 would be contrary to Paragraph 2 of Article 49(1) CRR, which provides that "The method chosen shall be applied in a consistent manner over time". | The analysis below is the French Banking Federation's answer to Paragraph 5 Deduction of insurance Holdings (Article 49 (1) of the CRR) in Chapter 2 Own Funds Section II of ECB public consultation on revisions to the ECB guide on options and discretions available in Union law published in November 2024.<br><br>In this consultation, ECB has indicated its intention to require financial institutions to apply the Danish Compromise not only to common equity (CET1) equivalent holdings in their insurance subsidiaries but also to Additional Tier 1 (AT1) and Tier 2 (T2) equivalent instruments issued by these same subsidiaries. This position would mark a significant departure from the established practice since January 1, 2014, when the CRR came into force. French institutions (as well as other EU institutions) that qualify as financial conglomerates under Directive 2002/87/EC, requested and obtained permission in 2013 from their then-competent authority (in France, the Autorité de contrôle prudentiel et de résolution or "ACPR") to apply the Danish Compromise solely to their equity holdings in insurance subsidiaries ("Insurance Subsidiary Equity").<br><br>This answer examines two main legal questions:<br>1.The scope of Article 49(1) of the CRR (so-called Danish compromise), particularly its applicability to AT1/T2 equivalent instruments of insurance subsidiaries ("Insurance Subsidiary AT1/T2").<br>2.Whether a competent authority can require the application of the Danish Compromise to both equity holdings and AT1/T2 instruments of insurance subsidiaries. | FBF |

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| | | | | 1.Legal framework<br><br>Part II of the CRR, entitled “Own funds and eligible liabilities” addresses the requirements for institutions to hold own funds in proportion to their risk-weighted assets. Within this Part II, Title 1, entitled “Elements of own funds” defines the various categories of own funds, i.e., CET1, AT1 and Tier 2 capital. Within Chapter 2 relating to CET1, Section 3 is entitled “Deductions from [CET1] items, exemptions and alternatives”.<br><br>Within this Section 3, Subsection 1 is entitled “Deductions from [CET1] items”. Within this Subsection 1, Article 36 CRR provides for certain mandatory deductions from CET1. Specifically, Article 36(1)(i) CRR provides that “Institutions shall deduct […] the applicable amount of direct, indirect and synthetic holdings by the institution of the [CET1] instruments of financial sector entities where the institution has a significant investment in those entities”.<br><br>Within the same Section 3, Subsection 2 is entitled “Exemptions from and alternatives to deduction from [CET1] items” and includes two provisions: Article 48 CRR (“Threshold exemptions from deduction from [CET1] items”) and Article 49 CRR (“Requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied”), i.e. the Danish Compromise.<br><br>Within Chapter 3 relating to AT1, Section 2 is entitled “Deductions from [AT1] items” and includes Article 56(d), which provides that “Institutions shall deduct […] direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of financial sector entities where the institution has a significant investment in those entities […]”, in a manner exactly similar to Article 36(1)(i) CRR with respect to CET1. Chapter 3 relating to AT1 contains, however, no section or subsection providing for exemptions from or alternatives to deductions, i.e. no equivalent to the provisions of Articles 48 and 49 situated in Chapter 2 relating to CET1.<br><br>The same applies mutatis mutandis to T2: within Chapter 4 relating to T2, Section 2 is entitled “Deductions from [T2] items” and includes Article 66(d), which provides that “Institutions shall deduct […] direct, indirect and synthetic holdings by the institution of Tier 2 instruments of financial sector entities where the institution has a significant investment in those entities […]”, in a manner exactly similar to Article 36(1)(i) CRR with respect to CET1 and Article 56(d) with respect to AT1. Chapter 4 relating to T2 contains, however, no section or subsection providing for exemptions from or alternatives to deductions, i.e. no equivalent to the provisions of Articles 48 and 49 situated in Chapter 2 relating to CET1. | The following analysis is based on both literal and contextual interpretation of the relevant CRR provisions, as well as the established practice of competent authorities since the regulation came into force. We believe that, based on literal as well as contextual elements, Article 49 (1) is an exemption from Article 36(1)(i) CRR only, and is therefore available for Insurance Subsidiary Equity only, while Insurance Subsidiary AT1/T2 are required to be deducted pursuant to Articles 56(d) and 66(d) CRR without any possible exemption, other than under Article 79 CRR.<br>Furthermore, even if Article 49 (1) were to be deemed applicable to Insurance Subsidiary AT1/T2, it could not be imposed by the competent authority, but could only be applied if the institution solicited, and obtained, permission to apply such treatment to its Insurance Subsidiary AT1/T2.<br><br>Any request by the relevant institutions or the competent authority to apply the Danish Compromise to Insurance Subsidiary AT1/T2, i.e. a treatment inconsistent with the consistent application since 1 January 2014 of (i) the Danish Compromise with respect to Insurance Subsidiary Equity as per the ACPR’s permissions, and (ii) deductions with respect to Insurance Subsidiary AT1/T2 would be contrary to the second paragraph of Article 49(1) CRR, which provides that “the method chosen shall be applied in a consistent manner over time”.<br><br>Please refer to the memo titled "24012024 - Danish Compromise - ECB Guide". | |
| | | | | Chapter 6 is entitled “General requirements for own funds and eligible liabilities” (“General requirements” in the initial version of CRR). This Chapter 6 deals with aspects common to all categories of own funds, such as distributions on own funds (Article 73 CRR) and supervisory permission to reduce own funds (Article 78 CRR). In particular, this Chapter includes provisions relating to deductions from own funds: Article 74 CRR (Holdings of capital instruments issued by regulated financial sector entities that do not qualify as regulatory capital); Article 75 CRR (Deduction and maturity requirements for short positions); Article 76 CRR (Index holdings of capital instruments and of liabilities); and Article 79 CRR (Temporary waiver from deduction from own funds and eligible liabilities). Within each of Chapters 2, 3 and 4 respectively, Articles 50, 61 and 71 CRR define the respective composition of CET1, AT1 and T2, including by reference to applicable exemptions and deductions.<br><br>•Article 50 CRR defines CET1 as “Common Equity Tier 1 items after the application of the adjustments required by Articles 32 to 35, the deductions pursuant to Article 36 and the exemptions and alternatives laid down in Articles 48, 49 and 79”, therefore including an express reference to exemptions or alternatives under Article 79 as well as Article 49 CRR.<br><br>•Articles 61 and 71 CRR respectively state that “The Additional Tier 1 capital of an institution shall consist of Additional Tier 1 items after the deduction of the items referred to in Article 56 and the application of Article 79” and “The Tier 2 capital of an institution shall consist of the Tier 2 items of the institution after the deductions referred to in Article 66 and the application of Article 79”, therefore also including a reference to possible exemptions under Article 79 CRR, but not including any reference to possible exemptions or alternatives under Article 49 CRR. | | |

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| | | | | 2.Application of the Danish Compromise to Insurance Subsidiary AT1/T2<br><br>A first question raised by the above texts is whether the Danish Compromise should be read as a derogation from the requirement in Article 36(1)(i) to deduct Insurance Subsidiary Equity from the institution's CET1 exclusively, or also as derogation from the requirement in Articles 56(d) and 66(d) CRR to deduct Insurance Subsidiary AT1/T2 from the institution's respective AT1 and T2.<br><br>2.1 / Literal interpretation<br><br>We note in the first instance that Article 49 CRR applies, by its own terms, to "own fund instruments" of financial sector entities. "Own fund instruments" is defined in Article 4(1)(119) CRR as "capital instruments issued by the institution that qualify as [CET1], [AT1] or [T2] instruments". The reference to this defined term is unclear in this context since own funds instruments of subsidiary financial sector entities are by definition not "issued by the institution" but issued by the relevant subsidiary.<br><br>In addition, the Danish Compromise applies by construction only to insurance sector subsidiaries. The CRR contains specific definitions of own funds of insurance sector entities. Specifically, Articles 4(1)101-105 CRR define respectively "Basic own funds", "Tier 1 own fund insurance items", "additional Tier 1 own fund insurance items", "Tier 2 own fund insurance items" and "Tier 3 own fund insurance items", by reference to Directive (EU) 2009/138 ("Solvency 2"). , which are used in Articles 44(b), 58(b) and 68(b) CRR. However, those definitions are not used or cross-referenced in Article 49(1) CRR.<br>It is therefore unclear whether the notion of "own funds instruments" of subsidiary insurance sector entities, as used in Article 49(1) CRR, which is in Chapter 2 (Section 3) relating to deductions from CET1, should be interpreted as referring to "Tier 1 own fund insurance items", which are insurance own funds deemed equivalent to CET1 instruments per Article 44(b) CRR, or to any of the own funds items of these entities, as defined in Articles 4(1)101-105 CRR, that are deemed equivalent to "own fund instruments" of credit institutions as per Articles 44(b), 58(b) and 68(b) CRR.<br><br>We note that the definitions of CET1, AT1 and T2 set out respectively in Articles 50, 61 and 71 CRR provide a useful element of interpretation on this point.<br><br>As mentioned above, Articles 61 and 71 define AT1/T2 respectively as AT1/T2 items "after the deduction of the items referred to in Article [56/66] and the application of Article 79". These provisions therefore provide no possibility for AT1/T2 to reflect an exemption resulting from Article 49 CRR to the deduction required by Articles 56/66 CRR, whereas, by contrast: (i) these provisions expressly allow AT1/T2 to reflect exemptions from deductions resulting from Article 79 CRR and (ii) Article 50 CRR, relating to the composition of CET1, expressly allows CET1 to reflect exemptions from deductions resulting from Article 49 CRR. | | |
| | | | | It follows that interpreting the notion of "own funds instruments" in Article 49(1) CRR as allowing the non-deduction of Insurance Subsidiary AT1/T2 (i.e. as being a derogation from Articles 56(d) and 66(d) CRR and not only Article 36(1)(i) CRR), would be directly contrary to Articles 61 and 71 CRR, since AT1/T2 of institutions may not, per these provisions, abstain from carrying out the deductions required under Articles 56 and 66 CRR other than as provided under Article 79 CRR.<br><br>Such interpretation would also deprive Articles 61 and 71 CRR of all useful effect, since these definitions would not accurately reflect the composition of AT1/T2 of institutions, particularly of institutions having the permission to apply the Danish Compromise. Pursuant to constant case-law, where a provision of EU law is open to several interpretations, only one of which can ensure that the provision retains its effectiveness, preference must be given to that interpretation. | | |

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| | | | | Conversely, interpreting Article 49(1) CRR as being a derogation from Article 36(1)(i) CRR only, but not from Articles 56(d) and 66(d) CRR, is consistent with the text of Articles 50, 61 and 71 CRR, and preserves their useful effect.<br><br>2.2Contextual interpretation<br><br>According to EU interpretive principles, when the literal reading of a provision is unclear, contextual aspects (including, where applicable, the situation of the relevant provision in the overall text) shall be used.<br><br>A/ Structure of the CRR<br><br>With respect to contextual elements, Article 49 CRR is situated in Chapter 1 relating to CET1, and specifically in Subsection 2 of Chapter 2, entitled “Exemptions from and alternatives to deduction from [CET1] items”. Article 49(1) CRR itself states that the competent authorities may permit institutions “not to deduct” the holdings of own funds instruments of a financial sector entity in which the institution has a significant investment, which, since it is included in the section relating to exemptions “from CET1 items”, is necessarily meant as an exemption from the requirement to deduct items from CET1 items set out in Article 36(1)(i) CRR. In turn, since Article 36(1)(i) CRR only requires the deduction from CET1 items of “[CET1] instruments” of financial sector entities, without referring to Insurance Subsidiary AT1/T2, it seems clear that the Danish Compromise should be read as an exemption available only with respect to “CET1 instruments” of financial sector entities, i.e., in the context of insurance sector entities, “Tier 1own funds”insurance items of these entities.<br><br>We also note that Chapters 3 and 4 relating to AT1 and T2 respectively, while they otherwise strictly replicate, to the extent relevant, the structure and wording of Chapter 2 relating to CET1, do not contain any section replicating Subsection 2 entitled “Exemptions from and alternatives to deduction from [CET1] items”. This would tend to confirm that the legislator did not intend for there to be any exemption from deduction with respect to Insurance Subsidiary AT1/T2, and therefore to make the Danish Compromise available only to Insurance Subsidiary Equity. Indeed, if the legislator had intended to introduce an exemption regime from the requirement to deduct AT1/T2 , it would have replicated Subsection 2 of Chapter 2 (“Exemptions from and alternatives to deduction from [CET1] items”) in corresponding sections of Chapters 3 and 4 respectively (“Exemptions from and alternatives to deduction from [AT1] items” and “Exemptions from and alternatives to deduction from [T2] items”), which it did not do.<br><br>In any event and as noted above, the fact that the legislator did not intend for there to be any exemption for AT1/T2, arising from Article 49 CRR, from the deductions required by Articles 56/66CRR (other than as provided under Article 79 CRR) is clearly reflected in Articles 61 and 71 CRR respectively, and confirmed by the contrast between these articles and Article 50 CRR relating to CET1, which expressly allows for the exemption under Article 49 CRR.<br><br>We also note that Part II, Title 1 CRR contains a specific chapter (Chapter 6), addressing general requirements for own funds. It follows that, if the legislator had intended for the Article 49 CRR to be an exemption from deduction requirements for all categories of own funds and not only CET1, it would have been included in Chapter 6 (as is the case for the exemption from deduction provided in Article 79 CRR), and not in Chapter 2 relating to CET1. | | |
| | | | | B/ Other provisions of CRR pertaining to the Danish Compromise<br><br>We note that Article 471 CRR, which provided an exemption from the deduction requirement during the period from 31 December 2018 to 31 December 2024, subject to certain conditions, explicitly mentions being a “derogation from Article 49(1)” and is entitled “Exemption from Deduction of Equity Holdings in Insurance Companies from [CET1] Items” (without any mention of Subsidiary AT1/T2 or deductions from AT1/T2 items), which tends to confirm that Article 49(1) was intended as being an exemption from Article 36(1)(i) CRR exclusively.<br><br>In the same vein, Article 481(2) CRR, which provided a temporary exemption from both the deduction requirement and the Danish Compromise during the period from 1 January 2014 to 31 December 2014 for institutions not meeting the financial conglomerates condition, explicitly mentions being a “derogation from Article 36(1)(i) and Article 49(1)” and states that competent authorities may require or permit institutions to apply the Danish Compromise “rather than the deduction required pursuant to Article 36(1)”, adding that in such case “the proportion of holdings of the own funds instruments” of the relevant subsidiary that is “not required to be deducted” shall be determined as a percentage between 0 and 50pc and the amount not deducted shall be risk-weighted in accordance with Article 49(4) CRR. This provision is very relevant in that it refers, like Article 49 CRR, to the notion of “own fund instruments”, making it clear that the legislator means in this context those “own funds that are required to be deducted pursuant to Article 36(1) CRR, i.e. Subsidiary Equity exclusively, and not Subsidiary AT1/T2.<br><br>On the basis of the above, we believe that, given (i) the clear definitions of AT1/T2 in Articles 61 and 71 CRR, which, by contrast to Article 50 CRR defining CET1, do not allow A1/T2 to reflect exemptions from deduction based on Article 49 CRR, and (ii) concurring contextual elements such as the structure of CRR and the legislator’s own language in Articles 471 and 481 CRR, as well as the ACPR’s interpretation of Article 49(1) CRR in its permission letters of 2013 the better view is that Article 49 is intended as an exemption from Article 36(1)(i) exclusively, and is not intended as an exemption from Articles 56(d) and 66(d) CRR, as a result of which it applies exclusively to Subsidiary Equity and not to Subsidiary AT1/T2. | | |

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| | | | | 3.Possibility for a competent authority to require the application of the Danish Compromise to both Insurance Subsidiary Equity and Insurance Subsidiary AT1/T2<br><br>Should the Danish Compromise be interpreted as applying to Insurance Subsidiary AT1/T2, in addition to Insurance Subsidiary Equity, the question becomes whether the competent authority may require the application of the Danish Compromise to institutions that have not requested its application to their Insurance Subsidiary AT1/T2 but only to Insurance Subsidiary Equity. In our view, this is impermissible.<br><br>Article 49(1) CRR explicitly refers, in three different instances, to the fact that the competent authority may "permit" or grant "permission" to an institution to apply the Danish Compromise, which entails that the institution solicits this permission, i.e. elects to apply the Danish Compromise to its relevant subsidiary holdings. The French institutions have so far only requested the permission to apply the Danish Compromise to "participations", i.e. equity holdings, in insurance subsidiaries, not Subsidiary AT1/T2, and the ACPR (to which the ECB has succeeded as competent authority) has granted that permission. Absent a solicitation from the institution to the competent authority to grant an additional permission with respect to Insurance Subsidiary AT1/T2, the competent authority is not empowered to permit and a fortiori require the application of the Danish Compromise to Insurance Subsidiary AT1/T2.<br><br>The distinction between the competent authority's ability to "permit" as opposed to its ability to "require" the institution to apply given prudential treatments is set out clearly in CRR. In a number of instances, the CRR provides that the competent authority may "permit" the institution to apply a given treatment, which entails that the institution has the option to apply such treatment, subject to soliciting, and obtaining, supervisory permission. In a number of other instances, the CRR provides hat the competent authority may "require" the institution to apply a given treatment, which entails that the authority may impose such treatment even absent a solicitation from the institution.<br><br>The fact that the Danish Compromise is a treatment that may only apply, subject to supervisory permission, to institutions that solicit permission to apply it, is confirmed by the second paragraph of Article 49(1) CRR, which provides that "the method chosen shall be applied in a consistent manner over time". In addition, based on this provision, any decision by an institution to solicit a permission to apply the Danish Compromise to Insurance Subsidiary AT1/T2, or by the competent authority to require it to solicit such treatment, i.e. a treatment inconsistent with the treatment applied consistently since 1 January 2014 without any change in the conditions on the basis of which the permission was granted, would constitute a breach of this requirement.<br><br>Finally, we note that the competent authority could seek to subject the continued granting of the permission to apply the Danish Compromise to Insurance Subsidiary Equity to the condition that institutions also request a permission to apply the Danish Compromise to Insurance Subsidiary AT1/T2, i.e. treat Insurance Subsidiary Equity and Insurance Subsidiary AT1/T2 as a "package". | | |
| | | | | We are of the view that such a course of action would not be supported by the legislation. Indeed, in order to apply such treatment, the notion of "own fund instruments" would need to be interpreted as all subsidiary own fund instruments, i.e. equity and AT1/T2 equivalents, taken together. Such an interpretation would be directly contrary to (i) the literal definition of "own fund instruments" set out in Article 4(1)(119) CRR, i.e. capital instruments issued by the institution that qualify as "[CET1], [AT1] or [T2] instruments", i.e. any category of own funds rather than all categories taken together, and (ii) Article 49(1) and (4), which do not require all subsidiary own funds to be treated in the same manner, and instead only require the method chosen to treat these own funds to be consistent "over time". Such course of action would also be inconsistent with the position taken by the ACPR in its decision in 2013 to grant permissions to use the Danish Compromise to Insurance Subsidiary Equity only (and with the ECB's position since then to maintain such permissions). | | |
| | | | | Conclusion<br><br>•We believe that, based on literal as well as contextual elements, the Danish Compromise is an exemption from Article 36(1)(i) CRR only, and is therefore available for Insurance Subsidiary Equity only, while Insurance Subsidiary AT1/T2 is required to be deducted pursuant to Articles 56(d) and 66(d) CRR without any possible exemption, other than under Article 79 CRR.<br><br>•Even if the Danish Compromise were to be deemed applicable to Insurance Subsidiary AT1/T2, it could not be imposed by the competent authority, but could only be applied if the institution solicited, and obtained, permission to apply such treatment to Subsidiary AT1/T2.<br><br>•Any request by the relevant institutions or the competent authority to apply the Danish Compromise to Insurance Subsidiary AT1/T2, i.e. a treatment inconsistent with the consistent application since 1 January 2014 of (i) the Danish Compromise with respect to Insurance Subsidiary Equity as per the ACPR's permission, and (ii) deductions with respect Insurance Subsidiary AT1/T2 would be contrary to the second paragraph of Article 49(1) CRR, which provides that "the method chosen shall be applied in a consistent manner over time".<br><br>•On a subsidiary basis, we would recall that for the past 12 years, conglomerates have implemented capital management practices within their group, especially in relation with subordinated debts issuances, according to a consistent application and understanding of the Danish compromise rules.<br><br>•The proposal would override the long-established application of level 1 regulation and undermine the way in which impacted banks have long been structuring such issuances.<br><br>•The industry needs to be able to plan and monitor its capital trajectory based on a stable framework where evolutions are anticipated and phased. In particular, they need to maintain the logic that led them to structure such AT1/ Tier 2 issuances. | | |

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| 2 | Section II -Chapter 3 - Point 3 iv | 34 | Amendment | For some banks that have not had a trading book until now, structured issues in the own liabilities have been classified in banking book without splitting the embedded option. Their back-to-back hedging products are also included in banking book. There is neither trading intent nor residual market risk exposure. However, in accordance with Article 104(2), point (i), and the third subparagraph in Article 104(2), these banks would be required to create a trading book to host the structured issues and the back-to back hedges, which would generate an unnecessary burden if exemption cannot be applied. Therefore, we suggest removing the following sentence from the relevant paragraph in the O&D guide:<br>"– the ECB considers this to be especially relevant for the requirements in Article 104(2), point (i), of the CRR, including the splitting of instruments,"<br>or adding a condition such as "unless the institution could prove the absence of trading intent" at the end of the paragraph. | | FBF |
| 3 | Section II, Chapter 2 Point 16 | 31 | Deletion | From a legal point of view, an entity should not be required to absorb losses of any other "undertakings" of the group. For company law reasons, own funds can only be transferred by a given entity to its shareholder or its subsidiary and not to any "undertaking" (such as sister company).<br>CET1 is by nature loss absorbent, and minority shareholders automatically absorb their share of losses at the level of the relating entity. Therefore, no additional proofs, including any legal opinion(s) or any board statement(s), related to the loss absorption should be required under article 84. The inclusion of mandatory distributions in the provision of the subsidiary's CET1 instruments to cover losses of other group undertakings or specific loss absorption mechanisms that contravene the creditors' hierarchy would also violate the eligibility criteria.<br>For Additionnal Tier one and Tier 2 instruments (articles 85-87), if issued by EU entities subject to BRRD, the write down and conversion of article 59 3c) BRRD is statutory (i.e provided that (i) "those instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis" and (ii) they are subject to a joint decision of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary) therefore we do not think that a legal opinion on the automaticity, effectiveness and enforceability will add any further assurance on the fact they will be "available to absorb losses at consolidated level". Such request of a legal opinion is not relevant and constitutes a disproportionate request for instruments issued by an EU entity subject to BRRD.<br>For proportionality reasons, statements from the Board (approving the legal opinion and "certifying that there are no current or foreseeable practical impediments to the transfer of the resources " ) should not be required to account more minority interests. Board statements should be limited to significant topics like for commitments in the context of capital waivers.<br>We therefore suggest to amend the O&D Guide accordingly and to differentiate the loss absorbency requirements for the recognition of additional amounts as minority interests in alignment with the legal rationale of the CRR. | | FBF |
| 4 | Section II, Chapter 3 Points 3 and 4 | 33 | Amendment | The guide should comply with CRR3 and clarify that Article 104(2)(d):<br>• Covers transactions where the business or activity model corresponds to a trading purpose, resulting in their classification as FVP&L; and<br>• Excludes items classified as Fair Value through Profit and Loss (FVP&L) when the business or activity model does not correspond to a trading purpose, particularly derivatives that mitigate IRRBB and are included in the IRRBB (or FXRBB) management framework, consistent with EBA Guidelines on IRRBB and FXRBB.<br><br>It is reminded that transactions not accounted for Fair Value through Profit and Loss (FVP&L) are classified in the prudential Banking Book (notably derivatives accounted for hedge accounting) are not subject to Article 104(2)(d).<br>The ECB should delete sections, (ii) and (iii)(a) on page 35 of the guide related to Article 104(2)(d) that are irrelevant and replace them with clarifications that:<br>• Transactions recognized as FVP&L are included in the prudential Banking Book when they fall under the IRRBB framework or in FXRBB framework;<br>• Other transactions that align with a trading purpose, including hedging transactions with a trading purpose that are accounted for as FVP&L in the prudential Trading Book.<br>Note that since Article 104(2)(d) targets transactions aligned with a trading purpose, these transactions cannot be classified in the prudential Banking Book and hence are not subject to exemption requests. | The Trading Book Classification Exemptions section is not consistent with the Level 1 text. This misalignment would lead to a dramatic and unjustified broadening of the scope of transactions subject to supervisory pre-approval, extending beyond the commonly understood analysis of Level 1 text. It would also introduce overly prescriptive technical requirements on instruments included in the scope of the exemption request, creating additional administrative burden and supervisory uncertainty. At a time when there is a push for regulatory simplification in Europe, these requirements would lead to unnecessary overcomplexity and misalignment with CRR3 and the European regulatory framework.<br><br>For a more detailed analysis, please refer to the below line and to the dedicated memo titled "24012025_FBF_Contribution_to_Draft_Response_to_ECB_CP". | FBF |

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| 5 | Section II, Chapter 3<br>Points. 3 and 4 | 33 | Amendment | Regarding authorization requested for inclusion in the banking book of 104(2)(d) instruments classified unambiguously as having a trading purpose under the accounting framework applicable to the institution.<br><br>1.Interest rate and FX derivatives used as economic hedges of banking book exposures in an ALM context<br>Proposal for the Implementation of CRR3 Art.104(2)(d) should be fully reconsidered<br>Compared to currently applicable Capital Requirement Regulation (CRR2), the Capital Requirement Regulation (CRR3) includes some clarifications, in Article 104 Inclusion in the trading book, on the boundary between the Trading Book (TB), that continues to be positively defined by the trading intent, and the Non-Trading Book ( aka “the Banking Book” (BB) that continues to remain defined negatively as the Non-Trading Book).<br><br>The section on Trading Book Classification Exemption of the Consultation Paper (CP) of the European Central Bank (ECB) is not consistent with the level 1 text.<br>It would change the TB vs. BB boundary well beyond what the European legislative process has defined.<br>It would lead to a dramatic and unjustified broadening of the scope of transactions subject to supervisory pre-approval, well beyond the commonly understood analysis of Level 1 text.<br>We are concerned that the ECB is ignoring the scope of this exemption request that clearly refers to trading purpose in CRR ( article 104(2)(d) ), reflecting the referred trading business model by BCBS ( Minimum Capital Requirements for Market Risk, §25.9(1)[2] ) , as the leading, as a consequence, to account those transactions for fair value through profit and loss.<br>Not only would such a mis-interpretation contradict the CRR, but it would also introduce overly prescriptive technical requirements for instruments deemed in the scope of the exemption request, additional administrative burden and supervisory uncertainty.<br>At a time where a call has been expressed in Europe for simplification of regulation, these requirements would simply lead to an irrelevant overcomplexity, on top of being misaligned with CRR3 and European regulatory framework.<br>Such a deviating interpretation would be detrimental to the management of Interest Rate Risk in the Banking Book (IRRBB) and Foreign Exchange Risk in the Banking Book (FXRBB), and it would ignore the existing regulatory framework, i.e. European Banking Authority (EBA) Guidelines on IRRBB and EBA Guidelines on Foreign Exchange Risk in the Banking Book (FXRBB) . | | FBF |
| | | | | The TB includes only transactions on instruments that meet its very definition, i.e. having a trading intent or hedging transactions held with trading intent and the supervisory interpretation of level 1 text should not lead the TB to become the default classification.<br><br>The European Central Bank (ECB) Guide on Options and Discretions should comply with CRR3 and clarify that Art.104(2)(d)<br>•cover transactions which business / activity model corresponds to a trading purpose and as a consequence are accounted for FVP&L; and<br>•do not cover items accounted for FVP&L which business / activity model does not correspond to a trading purpose notably but not limited to derivatives that mitigate IRRBB and are factored in IRRBB (respectively FXRBB) management framework consistent with EBA Guidelines on IRRBB (resp. FXRBB).<br><br>It is reminded that transactions not accounted for Fair Value through Profit and Loss (FVP&L) are classified in the prudential Banking Book (notably derivatives accounted for hedge accounting) are not subject to Article 104(2)(d).<br><br>The ECB should delete sections, ii) and iii)(a) pages 35 of the ECB draft Guide linked to Article 104(2)(d) that are irrelevant and replace them by clarifications that:<br>•transactions accounted for FVP&L are classified in the prudential Banking Book when they are included in the IRRBB framework (for interest rate risk in the banking book) or in FXRBB framework (for foreign exchange risk in the banking book);<br>•the other transactions which business / activity management corresponds to a trading purpose, including transactions that are hedging transactions which business / activity management corresponds to a trading purpose, and that are accounted for FVP&L are classified in the prudential Trading Book.<br>NB As article 104(2)(d) targets transactions which business / activity model corresponds to a trading purpose, those transactions cannot be classified in the prudential Banking Book and hence are not subject to exemption request.<br><br>The paragraphs below provide additional supporting elements of the above elements.<br>Accounting Frameworks Referred to in CRR3 Art.104(2)(d)<br>The CRR3 Art.104(2)(d) refers to the various accounting frameworks applicable to institutions (which may be IFRS or other local accounting frameworks) as a consequence to the intent / purpose of the transactions: “2. Institutions shall assign positions in the following instruments to the trading book: […] (d) instruments classified unambiguously as having a trading purpose under the accounting framework applicable to the institution”. The business / activity model which corresponds to trading purpose refers to the trading intent defined for the positive prudential classification in the TB. | | |

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| | | | | For instance, in International Financial Reporting Standards (IFRS) framework, the principle for classification and resulting measurement of financial instruments relies on the business model and the characteristics of contractual cash flows of the instruments. When the business model relates to short term intent, the transactions should be accounted for fair value through profit and loss (FVP&L). When contractual cash flows are not Solely Payments of Principal and Interest (SPPI), transactions should also be accounted for FVP&L. However, it does not mean that all transactions that are accounted for FVP&L relate to a trading intent: a FVP&L accounting mode does not systematically reflect a trading business model.<br><br>The guidance of IFRS 9 on assets and liabilities held for trading refers to a trading business model (cf. IFRS 9. BA.6.) as Trading generally reflects active and frequent buying and selling, and financial instruments held for trading generally are used with the objective of generating a profit from short-term fluctuations in price or dealer's margin.). In the IFRS, financial instruments are unambiguously accounted for held for trading only to the extent they meet these business model criteria.<br><br>In IFRS, derivatives are accounted for their fair value through Other Comprehensive Income (OCI) when documented as cash flow hedge (CFH) or net investment hedge (NIH), through profit and loss together with the offsetting hedged item when documented as fair value hedge (FVH) or through profit and loss (FVP&L) when not documented as hedge accounting instruments.<br>As described above, having derivatives accounted for FVP&L does not systematically reflect a trading intent. Indeed, the IFRS accounting treatment of derivatives as held for trading does not reflect neither a trading purpose nor a business model. and is merely a classification in a FVP&L accounting category.<br>Derivatives that are not meeting trading purpose business model criteria above but end up being accounted for held for trading are not unambiguously accounted for held for trading and are not covered by CRR3.Art.104(2)(b). As illustrations, this may happen due to limitations to hedge accounting framework (e.g. economic hedged items not eligible to hedge accounting, mitigating basis risk, operational efficiency reasons).<br>Only the derivatives that are entered in a business / activity model of trading intent should be considered as unambiguously having a trading purpose under the accounting framework, i.e. meeting the scope of Art.104(2)(d).<br>FINREP reporting also recognizes that derivatives that do not meet the criteria of hedge accounting can have a hedging purpose. They are reported as "economic hedge" in FIN10 "trading and economic hedge":<br>Derivatives that are held for hedging purposes but which do not meet the criteria to be effective hedging instruments in accordance with IFRS 9, with IAS 39 where IAS 39 is applied for hedge accounting purposes or with the accounting framework under national GAAP based on BAD, shall be reported in template 10 as 'economic hedges'. | | |
| | | | | As a conclusion, the trading purpose unambiguously drives the FVP&L accounting mode, but the reverse does not hold: a FVP&L accounting does not systematically convey a business / activity model that corresponds to a trading purpose.<br>The IRRBB and FXRBB Management Framework should be considered for the classification<br>The EBA Guidelines on Interest Rate Risk in the Banking Book (IRRBB) defines the required framework for the identification, evaluation, management and mitigation of IRRBB. This framework involves first, second and third lines of defense within each bank, and is already subject to the supervisory monitoring and review.<br>Those EBA Guidelines on IRRBB cover derivatives and require making no distinction of the accounting treatment:<br>•§19. Institutions should consider all interest rate sensitive instruments in the banking book in the context of the assessment and management of exposures to IRRBB, including assets, liabilities, interest rate derivatives, non-interest rate derivatives referencing an interest rate and other off-balance sheet items (such as loan commitments).<br>•§36. Institutions using derivative instruments to mitigate IRRBB exposures should possess the necessary knowledge and expertise. Each institution should demonstrate that it understands the consequences of hedging with interest rate derivatives.<br>•§38. When making decisions on hedging activities, institutions should be aware of the effects of accounting policies, but the accounting treatment should not drive their risk management approach.)<br>They also cover the boundary between the Banking Book and the Trading Book:<br>•§47. The policies should be well reasoned, robust and documented and should address all IRRBB components that are important to the institution's individual circumstances. Without prejudice to the proportionality principle, the IRRBB policies should include the following: […] (a) The application of the boundary between 'non-trading book' and 'trading book'. Internal risk transfers between the banking book and the trading book should be properly documented and monitored within the broader monitoring of the IRRBB originated by interest rate derivatives instruments. | | |
| | | | | The EBA Guidelines on Foreign Exchange Risk in the Banking Book (FXRBB) provide a similar framework for the management of FXRBB, notably with:<br>•§44 It should be noted that the CRR requires institutions to include in the trading book positions for which they have a trading intent. Regardless of the nature of the financial instruments, and, in particular, regardless of their accounting treatment, institutions should include instruments that are taken for hedging the ratio and for which they do not have a trading intent in the non-trading book. For example, an institution may hedge the ratio by means of derivatives that, according to the business model of the institution, will be kept until maturity. In this case, the competent authority should not force the institution to book those instruments in the trading book just on the basis that those instruments are allocated to the trading book in the accounting framework.<br><br>The absence of trading purpose / trading intent, including for a derivative that mitigates IRRBB / FXRBB and that would not be accounted for as hedging instruments from an accounting standpoint, is evidenced through the inclusion in the IRRBB / FXRBB framework, within EBA Guidelines on IRRBB / FXRBB. Within those frameworks, mitigating IRRBB / FXRBB with derivatives is inherent to IRRBB / FXRBB strategies.<br>2.Credit (or equity) derivatives micro-hedging banking exposures and recognized as prudential hedges as Credit Risk Mitigants<br>Those derivatives in the form of Credit Default Swap (CDS) or Total Return Swap (TRS) that are recognized as credit risk mitigants in the CRR3, covered by the CRM framework of the existing prudential framework, should naturally not fall under the ECB derogations of Article 104(4) as they are by nature not held with trading intent, nor are they hedging transactions held with trading intent. | | |
| 6 | Section II -Chapter 3 - Point 3 ii.b | 35 | Amendment | Granular information is requested on the hedged instrument such as the termination date while for macro-hedge this information is not available. | | FBF |

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| 7 | Section II, Chapter 3 paragraph 3 Point viii | 33 | Deletion | This point 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.<br>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). | | FBF |
| 8 | Section II, Chapter 3, Section II, Derogation to calculate a separate interest, leases and dividends component for specific subsidiaries (Article 314(3) of the CRR) | 45 | Amendment | **314(3)(b)**<br>The current proposal defines "high PDs" by comparing the credit risk exposures of the retail/commercial banking subsibidiary to the PDs of "similar loans" of the parent credit institution without defining the notion of "similar loans".<br>Therefore, we propose the below amendments:<br>- The PDs of at least 50% of the subsidiary's combined retail and commercial credit risk exposures, measured by taking Stage 1 IFRS 9 PDs over the last five years, are at least twice as high as the Stage 1 IFRS 9 PDs of loans within the same exposure class of the parent credit institution measured on an individual basis over the same period.<br><br>**314(3)(c)**<br>As the exemption will modifiy the business indicator and will not impact the losses, we propose the below amendments to the wording:<br>- (i) the credit institution's loss component calculated on a consolidated basis does not exceed its business indicator component calculated on a consolidated basis before the application of the derogation or due to the derogation (for this purpose, its loss component should be calculated by multiplying its average annual operational risk losses over the last five years by 15); | Using the well-defined "exposure class" concept poses less interpretation risk than the notion of "similar loan; | FBF |
| 9 | Section II and Section III Chapter 2, Point 2 | 93 | Clarification | The EBA RTS has not yet been published regarding article 314 of CRR and as such banks need clarity on the process to be followed (e.g. simple notification needed and for which information?). | | FBF |
| 10 | Section II or Section III - Chapter 2 | | Clarification | The transitional arrangements for the output floor introduced in art 465(5) of CRR3 (risk weight of residential real estate) is conditioned by the fulfilment of the conditions listed in paragraph 8 of art 465.<br>Art. 465 §8 point f states that : "the competent authority has verified that the conditions set out in points (a) to (e) are met".<br>More clarity on the verification process and ECB expectations would be welcome. | WRT CRR3 art.465 §(8)(f) banks are not clear on the process to be followed (e.g. simple notification? and information required?) | FBF |
| 11 | Section 2, Chapter 3, paragraph 3 2nd sub para (iv) (v) (vi) | 36 | Amendment | CRR article 104(4) provides that the ECB shall approve a derogatory classification in the banking book where the institution has effectively demonstrated the absence of trading intent or hedging of a position with trading intent.<br><br>items (iv), (v) and (vi) from the second sub-paragraph indicate that banks should submit:<br>(iv) an impact assessement on own fund requirements<br>(v) the intended accounting treatment and estimate of the account value<br>(vi) the expected position size and impact on risk metrics<br><br>Apart from he intended account treatment mentioned in item (v), the other items are not relevant for the required demonstration. Furthermore, this may suggest that two requests with similar rationale but different impacts/metrics may be treated differently, which would go against the level 1 text. Finally, providing such metrics and impact assessments is quite burdensome and as mentioned above provide limited added value for the processing of such requests. | The basis for a derogation to the presumptive trading book classification is to demonstrate an absence of trading intent (or hedge of an exposure with trading intent) to the satisfaction of the supervsiroy authority. The guide is listing a number of items which are not relevant for the demonstrattion and potentially quite burdensome to produce. They should be removed from the derogation file. | FBF |

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| 12 | Section 2, Chapter 3, Paragraph 16 | 52 | Amendment | The ECB lists two conditions for approving the fallback on internal ratings: "(i) an internal ratings-based (IRB) model approved by the supervisor for the same counterparties is in place; (ii) the JST does not have concerns related to that approved IRB model, substantiated by high severity findings that have resulted in the imposition of limitations or conditions that are still unresolved."<br><br>The first condition is not disputable, but the second one may be overly conservative. The use case for probability of default (PD) models in the context of CVA is much more simple than the original use case for IRB risk weights, as PD models will only be used to determine whether a counterparty falls into the broader investment grade (IG) or high yield (HY) categories. There are cases where a model may encounter high severity findings accompanied by open limitations and conditions in the context of the IRB risk weights, yet still effectively distinguishes between IG and HY counterparties. For example, if the ECB imposes a floor or add-on for certain rating grades. While this may render the model overly lenient for IRB purposes, if these grades still classify as IG, banks should still be allowed to use them for calculating CVA RWAs.<br><br>Furthermore, the CVA use case closely resembles the transitional arrangement outlined in the output floor (CRR Article 465.3), which permits EU banks to assign a lower risk weight to unrated corporates classified as IG when assigned a PD less than or equal to 0.05%. We note that this approach does not require approval from the ECB and is not bound by the same constraints.<br><br>We suggest the following amendment to the wording:<br><br>"(ii) the JST does not have concerns related to that approved IRB model and its performance to differentiate between counterparties deemed to be investment grade (i.e. mapped to a credit quality step 1 to 3 ) and those deemed to be non-investment grade (i.e. mapped to a credit quality step 4 to 6)~~, substantiated by high severity findings that have resulted in the imposition of limitations or conditions that are still unresolved.~~" | The use case for internal ratings in the CVA risk charge is much simpler (differentiate between IG and NIG) that the use case of computing the IRB risk-weight. The conditions set for allowing the use of internal ratings for CVA OFR appear to be too restrictive. | FBF |
| 13 | Section II, Chapter 3, section 8 | 42-44 | Amendment | We are surprised to see that the ECB shows that it will apply the recommendation issued by the EBA in its 2020 report on SRT without indicating it as a reference in its guide. As regard to the CRT test that the ECB propose to introduce in its guide, we would like to underline that ECB doesn't seem to make a difference between the requirements of article 244/245.2 and those of article 244/245.3 : Indeed article 244/245.3 indicates that, in case a bank doesn't meet the quantitative SRT tests of art. 244/245.2 a bank can recognise the SRT if it demonstrate to the competent authority that the risk transferred is proportionate to the RWA relief provided by the securitisation : the demonstration is to be made by the bank. Instead, in case the transaction meets art.244/245.2 it's to the ECB to demonstrate that the risk transfer is not commensurate to the RWA relief. The proposal made in the ECB guide (that reflects indeed the current ECB practice) is that banks should demonstrate that there is commensurateness of risk transfer in all cases, and in particular even if the mechanical tests of art.244/245.2 are met. We would like therefore to underline the fact that ECB goes beyond CRR requirements.<br>In general, we would like to underline that the EBA report, from which the ECB has taken different recommendations, is not a guideline and that these recommendations have not been tested by the EBA on real transactions and banks observe that some of these recommendations need to be adapted.<br>In particular the hypothesis to be used for the CRT test need to be reviewed, of which the basis for the calibration of the EL and UL, but also banks should have the ability to define alternative scenarios when they are more fitted to the nature of the underlying securitised asset.<br>Furthermore, from a fundamentally dogmatic perspective, it appears to us that the CRT test does not effectively evaluate the commensurateness quality of a risk transfer, aiming merely to meet an adequate minimum. Instead, it rather ensures that the risk transfer recognized by regulation is assessed more stringently than through a more “economic” risk transfer measurement methods. The actual risk transfer might be minimal, yet the test could still yield a positive result in certain scenarios (and a high level of risk transferred could also lead to a negative result of the test).<br><br>In regard to specific points subjects to the comprehensive review by the ECB :<br>""iv) whether the cost of credit protection for synthetic securitisation is so too high that it would undermine the transfer of credit risk;"" We observe that the ECB is using the recommendation of EBA 2020 report. However as explained above, the recommendations of this report have not been extensively tested and typically the proposals made by the EBA show severe drawbacks, even for largely placed transactions executed in an historically low spread market.<br><br>""(vii) whether, where the originator uses the Securitisation External Ratings - Based Approach (SEC-ERBA) as provided for in Article 254 of the CRR, to calculate capital requirements on the retained securitisation positions, the chosen external credit assessment institution (ECAI) has appropriate experience and expertise in the asset class being rated.""<br><br>We believe this statement goes beyond ECB power. First we would like to remind the ECB that, if CRR article 254.4 grants the right to the Competent authority to prohibit, on a case by case basis, the usage of the SEC-SA this right doesn't exist for the SEC-ERBA. Secondly, the appropriate experience and expertise of an ECAI in the rating of an asset class is made by the EBA under the mandate granted under CRR article 270e. This is why we ask ECB to remove this statement.<br><br>Overall, we regret that the supervisory framework of SRT transactions is becoming increasingly mechanistic and rigid, based on assessment approaches that have not been sufficiently tested and that prove unfit for some types of transactions. The creation of an ECB central “horizontal team”, while aiming for more coordination across JSTs, is actually degrading the dialogue between banks and supervisors, since the decision is ultimately made by the central team, which has no interaction with banks and often does not provide feedback on time. This increasing disconnect between market timing and supervisory assessment is worrying at a time where the EU intends to scale up the SRT market" | | FBF |
| 14 | Section 2, Chapter 3, Paragraph 4 | 36-38 | Clarification | It is unclear whether these conditions apply specifically to the direct holding of hedge fund shares or to all types of exposures, including derivatives. | A clarification of the scope is needed and whether it applies to the direct holding of hedge fund shares, or whether it extends to other exposures. | FBF |
| 15 | Section 2, Chapter 3, Paragraph 4(ii) | 37 | Deletion | The text for (ii) states that "the hedge fund does not have features that might obstruct the tradability of such instruments (e.g. lock-up periods, cases involving redemption allowances where only specific time frames for periodic redemptions are possible – weekly, monthly, quarterly, yearly – or cases with redemption closings during volatile market periods);"<br><br>This appears to limit the possibility of derogation to daily NAV hedge funds, which is overly restrictive. | The conditions for classifying exposures to hedge fund should align with those applied to Collective Investment Undertakings (CIUs) under Article 104(8). Special care should be taken in classifying these products, particularly those developed in the US. The proposed US draft text does not impose any constraints on the classification of hedge funds exposures, which could create an unlevel playing field for EU banks operating in the US market. | FBF |
| 16 | Section 2, Chapter 3, Paragraph 4 | 36 | Deletion | The text states "The ECB is of the view that separate requests should be submitted for each hedge fund".<br><br>This request is not aligned with the time-to-market of the activity and would also be quite burdensome to implement from an operational perspective. | The conditions for classifying exposures to hedge fund should align with those applied to Collective Investment Undertakings (CIUs) under Article 104(8). Special care should be taken in classifying these products, particularly those developed in the US. The proposed US draft text does not impose any constraints on the classification of hedge funds exposures, which could create an unlevel playing field for EU banks operating in the US market. | FBF |

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| 17 | Section 2, Chapter 3, Paragraph 4(iii) | 37 | Deletion | The text for (iii) states that "the hedge fund is listed".<br><br>This condition is overly restrictive. | The conditions for classifying exposures to hedge fund should align with those applied to Collective Investment Undertakings (CIUs) under Article 104(8). Special care should be taken in classifying these products, particularly those developed in the US. The proposed US draft text does not impose any constraints on the classification of hedge funds exposures, which could create an unlevel playing field for EU banks operating in the US market. | FBF |
| 18 | Section 2, Chapter 3, Paragraph 4(v) | 37 | Clarification | The text for (v) states "how the institution ensures that relevant positions under the discretion provided for in Article 104(4) of the CRR are managed by units responsible for non-trading book management which are separate from units responsible for trading book management". | This point needs further clarification.<br><br>It appears to be a typographical error. The text should clarify how the institution ensures that the relevant positions, as outlined in CRR Article 104(5) of the CRR, are managed by units responsible for trading book management, which operate independently from those responsible for non-trading books. | FBF |
| 19 | Section II, Chapter 3, Point 3 | 33-34 | Deletion | The ECB should exclude instruments referred to in Article 104(3)(h) of the CRR (own liabilities) from the priority order set out in the second paragraph of Section II, Chapter 3, No. 3. Own liabilities that are 'instruments classified unambiguously as having a trading purpose under the accounting framework applicable to the institution' should continue to be allocated to the trading book in order to ensure a synchronised treatment of such instruments in terms of both regulatory and accounting treatment. Furthermore, this treatment has been and would continue to be appropriate to the nature of such instruments and in line with the spirit of the Basel standards. | A general inclusion of own liabilities in the non-trading book, even in the case of instruments classified as held for trading/allocated to the trading portfolio under the relevant accounting framework, would lead to the following (non-exhaustive) problems:<br><br>• De-synchronisation of the accounting and regulatory treatment of own liabilities when they are issued for trading purposes under the accounting rules. An own liability that is a structured instrument would be recognised at market value in the trading portfolio or in the held for trading category, subject to the established intention to trade requirements. This valuation for accounting purposes would conflict with a non-trading book designation of such liabilities required for regulatory purposes. Any resulting adjustments such as a seperation of the liability from the underlying derivative would require much time and effort.<br><br>• If the new treatment of own liabilities were to be applied to those already on the books, these existing instruments would have to be reclassified, even though they do not normally have long maturities. In principle, IFRS does not provide for reclassification of liabilities as this must be done once at the time of issue. The same applies to other account frameworks.<br><br>• The new priority order creates uncertainty about reporting requirements, as it remains unclear how classification criteria such as trading purpose are to be interpreted.<br><br>The regulatory treatment of the trading book/non-trading book boundary should reflect differences across banks and accounting regimes and allow for a synchronised treatment of instruments in each bank. | FBF |

# 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 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 |
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| ID | Section | Type of comment | Detailed comment | Concise statement as to why your comment should be taken on board | Name of commenter |
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| 1 | Transitional arrangements for ECAI credit assessments of institutions | Amendment | The consultation provides for an extension of the transition period up to July 26. However, given the low availability of compliant ratings in the market, banks consider that ECB should be ready to extend further this deadline until minimum 3 large agencies provide compliant ratings. | | FBF |

# 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 Guideline 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.**

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| **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 |
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# 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 Recommendation 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.**

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| **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 |
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