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

Deutsche Bank

Contact person

Mr/Ms

First name

Surname

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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

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
	Section II, Chapter 2, , point 16	32-33	Amendment	We understand that the minority interest recognition framework prior to the introduction of the „lower of the two requirements criterion" in CRR III was already designed such that the minority interest recognised was loss absorbent at group level. This was not achieved by an automatic transfer of resources. Instead, this was achieved by limiting the amount of minority interest recognised at group level to the standalone capital requirement applicable to the subsidiary, capped at the capital requirement from a group perspective. We understand that the rationale for limiting the recognition of minority interests is that only the amount of minority interests that would cover losses on consolidated level should be recognised at consolidated level. In more practical terms this means, in case the subsidiary's own funds instruments are written down or converted, the generated loss absorption is confined to the subsidiary. Therefore, the recognised minority interest is limited to the requirements applicable to the subsidiary. However, to ensure that the risk and capital allocated to the subsidiary do not exceed those determined at the consolidated level, a second safeguard was introduced, which limits the recognition to the requirements on consolidated level. The lower of the two levels should be applicable, ensuring that only that part of own funds is recognised on a consolidated level, which would absorb losses attributable to the group. According to this rationale, the cap at the capital requirement from a group perspective was deemed necessary to ensure loss absorbency on group level in cases where from a group perspective the consolidated capital requirement of the subsidiary is lower than the subsidiary's standalone capital requirement. This cap intends to align group level capital allocation with respective risk recognition and ensures loss absorbency on group level as it restricts the minority interests recognised on group level to the capital requirements applicable on group level for the subsidiary. As long as the amount of minority interest recognised is capped at the capital requirement applicable on group level for the subsidiary, no automatic transfer of resources is necessary in order to ensure loss absorbency at group level. Hence with respect to the demonstration of loss absorbency on group level, it is important to distinguish the two possible cases one might find with regards to minority interest recognition, namely: (a) a situation where the minimum capital requirement at the standalone subsidiary level is lower than the requirement from a group contributory perspective; and (b) a situation where the standalone requirement is higher than the group contributory one. To recognise an additional amount of minority interest at group level under the new CRR III rules, in category (a) it must be demonstrated that there is sufficient capital in the entity to cover the higher group requirements whilst in category (b) it needs to be demonstrated that the additional amount of minority interest to be recognised at group level is available to cover losses outside the entity.	The derogation from the „lower of the two requirements criterion" is possible if it can be demonstrated that the additional amount of minority interest recognised is available to absorb losses at consolidated level. In this respect the O&D consultation requires an automatic transfer of resources within the group such that capital instruments issued by the subsidiary also absorb losses arising outside of the subsidiary. For any subsidiary that would be subject to own funds requirements on a standalone basis, this would make the own funds instruments ineligible for standalone capital requirement purposes. There are cases where loss absorbency on group level can be demonstrated without such an automatic transfer of resources.	Deutsche Bank	Publish
				Case (b) represents a special situation that requires further consideration in relation to the original intention of the lower-of concept. As the capital requirement from a group perspective is below the standalone capital requirement, the amount of minority interests recognised as loss absorbing on group level must in general be restricted to this lower amount to align the capital recognised with allocated risk and thus ensuring loss absorbency at group level. Loss absorbency of the additional amount of minority interests at group level is only given if the capital of the subsidiary can be used to cover losses that arise outside of the entity. When playing through standard cases of minority shareholder contracts, we deem it impossible to fulfil this requirement of an automatic intragroup transfer of resources. Any subsidiary that is subject to own funds requirements on a standalone basis would not be able to meet the requirement for the automatic absorption of losses incurred by other group entities without violating the qualitative requirements for the recognition of the subsidiary's own funds instruments under the CRR or IFR, i.e. it would make the own funds instruments ineligible for standalone capital requirement purposes. A more detailed explanation is provided below. In contrast, in case (a), the capital requirement from a group perspective is higher than the standalone capital requirement. Hence, in this situation loss absorbency on group level does not require that minority interests cover losses outside of the entity. Instead, it is required to demonstrate that the entity has capital to cover the higher capital requirement from a group perspective. In case (a) this condition can be evidenced by: • The subsidiary being integrated into the capital management of the consolidated group, and accordingly required to hold sufficient capital to meet the group allocated capital requirement which is determined based on the CRR; • The parent as the majority shareholder having the means to ensure that the CET1 capital of the subsidiary does not fall below the higher group contribution through the subsidiary making capital distributions; • The actual time-series of CET1 capital of the subsidiary compared with the standalone capital requirement for the subsidiary and the contributory capital requirement which is allocated by the group confirms that the subsidiary had sufficient CET1 capital to cover the higher group contributory capital requirement – a proof of concept of the above two points.			

				A proposed amendment of the O&D guide to distinguish the two cases is provided below. Additional comments of the criteria established for case (b) are provided below. Proposed amendment of O&D guide: 16. DEROGATION FROM THE "LOWER OF THE TWO REQUIREMENTS" CRITERION WHEN CALCULATING MINORITY INTERESTS AND QUALIFYING TIER 1 and TIER 2 CAPITAL (Article 84(1), point (a), Article 85(1), point (a), and Article 87(1), point (a), of the CRR) When assessing whether the additional amount of minority interests generated by derogating from Article 84(1), point (a), of the CRR is available to absorb losses at consolidated level, two cases must be distinguished. If Art. 84 (1) (a) (i) of the CRR constitutes the lower of the two requirements, then the ECB will consider all the following factors: (1) whether the subsidiary is integrated into the capital management of the consolidated group, and accordingly is required to hold sufficient capital in order to meet the group allocated capital requirement which is determined based on the CRR; (2) whether the parent as the majority shareholder has the means to ensure that the CET1 capital of the subsidiary cannot be reduced by undue capital distributions; If Art. 84 (1) (a) (ii) of the CRR constitutes the lower of the two requirements, the ECB will consider all the following factors: (1) whether the provisions governing the instruments owned by persons other than the undertakings included in the consolidation pursuant to Part One, Title II, Chapter 2 of the CRR include loss-absorption mechanisms that are automatically activated in the case of losses suffered by other undertakings included in the consolidation pursuant to Part One, Title II, Chapter 2 of the CRR 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; (2) whether the supervisor responsible for the supervision of the subsidiary on an individual or sub-consolidated basis, if different from the consolidated supervisor, requires the subsidiary to transfer the resources generated through the activation of the loss-absorption mechanisms under point (1), or equivalent measures, to those undertakings included in the consolidation pursuant to Part One, Title II, Chapter 2 of the CRR that suffered the losses; (3) whether there are other current or foreseen material, practical or legal impediments to the prompt transfer of resources generated through the activation of the loss-absorption mechanisms under point (1) to those undertakings included in the consolidation pursuant to Part One, Title II, Chapter 2 of the CRR that suffered the losses, whereby the ECB plans to verify that: (i) the shareholding and legal structure of the group does not hamper the transferability of the resources; (ii) the formal decision-making process of the subsidiary ensures prompt transfer of the resources; (iii) neither the by-laws of the undertakings, nor any shareholder's agreement, nor any other agreements contain any provisions that may obstruct the transfer of resources; (iv) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of the resources; (v) no third parties are able to exercise control over or prevent the prompt transfer of the resources. Documentation of the application of the derogation from Articles 84(1), point (a), 85(1), point (a), and 87(1), point (a), of the CRR For the purposes of the assessment, the ECB expects that the supervised entities provide the following: If Art. 84 (1) (a) (i) of the CRR constitutes the lower of the two requirements: (1) documentation of the integration of the subsidiary into the capital management of the consolidated group; (2) a legal opinion demonstrating that the parent has the means to ensure that the CET1 capital of the subsidiary cannot be reduced by undue capital distributions; (3) if available, a time-series of CET1 capital of the subsidiary compared with the standalone capital requirement for the subsidiary and the contributory capital requirement which is allocated by the group			
				If Art. 84 (1) (a) (ii) of the CRR constitutes the lower of the two requirements: (i) a statement approved by the management bodies of the relevant subsidiaries and of the undertaking established in the European Union that is responsible for compliance with prudential requirements on a consolidated basis, certifying that there are no current or foreseeable practical impediments to the transfer of the resources referred to under point (3) above; (ii) a legal opinion issued by an external independent third party established in the European Union and approved by the management body of the affected subsidiary and of the undertaking established in the European Union that is responsible for compliance with prudential requirements on a consolidated basis, demonstrating that: (a) the loss-absorption mechanisms referred to under point (1) above are automatic, effective and enforceable; and (b) there are no obstacles to the prompt transfer of resources resulting from either applicable legislative or regulatory acts (including fiscal legislation) or legally binding agreements; (iii) a list of the subsidiaries for which the application of the derogation from Article 84(1), point (a), of the CRR is requested; (iv) the impact on the consolidated Common Equity Tier 1 ratio of the application of the provision; (v) evidence of the existence of the requirement referred to under point (2) above. The same applies, mutatis mutandis, to the application of Articles 85(1) and (2) and 87(1) and (2) of the CRR.			
				Comments on the first criterion regarding the terms and conditions of the relevant instruments: If loss absorbency is defined such that an automatic intragroup transfer is required, it will likely be impossible to fulfil such a requirement. This is because a subsidiary that is subject to own funds requirements on a standalone basis would likely not be able to meet the requirement for the automatic absorption of losses incurred by other group entities without violating the qualitative requirements for the recognition of the subsidiaries' own funds instruments under the CRR and IFR. CET1 instruments by design absorb the losses of their issuer (e.g. the issuing institution), but not the losses of e.g. other subsidiaries of an ultimate parent. In company law, stocks of stock corporations are part of share capital of the stock corporation that absorb the losses of the stock corporation, which is not liable for losses incurred by other entities in a wider or different consolidation circle of a group. The assessment of the eligibility of CET1 instruments under the CRR is also tied to a classification as stocks in the sense of the applicable national company law (see the EBA's list of capital instruments that competent EU and EEA authorities have classified as CET1). Further, Art. 28 (1) (i) CRR on the loss absorbency of CET1 instruments requires that "compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments". It is doubtful if CET1 instruments that designed to absorb losses of other group entities would still be available to absorb the losses of their issuer first, as required by Art. 28 (1) (i) CRR. The inclusion of mandatory distributions in the provision of the subsidiary's CET1 instruments to cover losses of other group undertakings would also violate the requirements for CET1 instruments, in this case Art. 28 (1) (h) CRR ("the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation"). Also for AT1/T2 instruments, it would not be aligned with the concepts of AT1/T2 loss absorption if the AT1/T2 instruments of a subsidiary would absorb the losses of its ultimate parent and of any "upstream" subsidiary of the parent. If e.g. the AT1 instruments of the subsidiary would be written down due to such losses, the requirement of Art. 54 (3) CRR (that the amount of instruments recognised in AT1 items is limited to the minimum amount of CET 1 items that would be generated if the principal amount of the AT1 instruments were fully written down or converted into CET1 instruments would no longer be met, since this relates to the subsidiary and not to the wider consolidated group of entities. Finally, if the subsidiary's own funds instruments (CET1/AT1/T2 instruments) would equally absorb losses (here: of other group entities) (as foreseen by the O&D guide, which contains identical requirements for all types of own funds instruments), this could endanger their ranking.			

				Comments on the second criterion regarding Art. 59 BRRD: This second criterion relates to "Article 84(1), point (a), of the CRR", i.e. the rules on the inclusion of certain CET1 items (such as CET1 instruments) of the subsidiary in the consolidated CET1 capital and refers to: "if those undertakings are subject to write-down or conversion of their capital instruments or eligible liabilities pursuant to Article 59 of the BRRD". It is not clear to us what is meant by "write-down or conversion" with respect to CET1 instruments and how this could be achieved for CET1 instruments. It is unclear to which entity this requirement applies and under which circumstances the write-down of conversion must be triggered. The wording "[…] 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" suggests that the criterion applies to the undertaking that has incurred the loss. However, based on the context, we assume it applies to the subsidiary from which the minority interest originates. We assume that the write-down or conversion requirements apply to AT1 or T2 instruments issued by the subsidiary from which the minority interest originates, since a conversion of CET1 instruments would not make sense. Equally, it is not clear under which circumstances the write-down or conversion must be triggered. In case of a Single Point of Entry resolution strategy, write-down or conversion will not be triggered automatically by the resolution authority for the own funds instruments of subsidiary A if another subsidiary B suffers losses (the idea would rather be that losses are effectively passed on to the resolution entity).			
3	Section II, Chapter 3	34	Amendment	Since the proposed framework under Art. 104 (2)(d) CRR does not refer to internal hedges, we presume, that it only applies to external transactions. This is against the background, that internal transactions are post consolidation under IFRS no longer existing and are hence not classified as trading for IFRS purposes. That statement should be reflected in the document.	Without this clarification, it is not clear, if also for internal derivatives an ECB approval is requested for BB allocation.	Deutsche Bank	Publish
		34-37	Amendment	Fundamentally the documentation requirements for a Banking Book allocation are quite extensive and redudant. This increases the operational burden on banks. This undermines the European Commission committment to reduce reporting requirements for EU firms, without adding to financial stability or resilience. In practice a Banking Book allocation is only justifiable, if there is neither trading intent nor the transaction hedges a position held with trading intent. Banks are requested to provide different documents confirming the same rationale, e.g. section 3 paragrah 5 (iii), (v), (vi), (vii) are all referring to missing trading intent. Also the assignment to Banking Book should only be based on the rationale of non-existing trading intent. Saying this, any numbers around impact assessment, estimate of accounting value, expected position size are not decise factors for a Banking or Trading Book assigment. Further, this numbers, in particular the accounting value for derivatives, are volatile and subject to changes over the course of the transactions.	We recommend to reduce the variety of documents to be provided to ECB confirming the non-existing trading intent. Further, no quantitative numbers should be requested. This will avoid increase in operational costs.	Deutsche Bank	Publish
4		34	Amendment	Section 3 paragraph 1 clarifies that an assignment to the Banking Book is only possible, if ECB has approved it. Under the assumption, that a position is not captured by an ECB approval for a group of positions, this implies, that once banks enter into a new transaction, banks will assign the transaction to the Trading Book in a first instance. Only afterwards, once the ECB approval has been granted, the transaction is Banking Book eligible and would need to be reclassified to the Banking Book. We presume, that the assignment to the Banking Book following ECB approval under Art. 104 (4) does not request in addition an ECB approval under Art. 104a CRR (reclassifications).	Without this clarification it is unclear, if a position post initital assignment to the Trading Book due to lacking ECB approval is also subject to Art. 104a CRR3 once ECB approves the Banking Book assignment. It is our understanding, that in addition to Art. 104 (4) approval no further approval/management board approval under Art. 104a is requested. This should be included in the ECB OD guide.	Deutsche Bank	Publish
5		36	Amendment	Section 3 paragraph 5 (viii) requests banks to define actions post initial assignment that may not be known at inception. Even if actions are known at inception, we presume, that banks are not tied to those predefined envisaged actions if circumstances are changing over the course of the transaction. Otherwise, that requirement limits the bank`s discretion unnecessarily.	The ECB O/D guide should focus on intial assignment and not cover any actions post initial assignment.	Deutsche Bank	Publish
6		36	Amendment	Section 3 paragraph 6 (ii) (b) requests the termination of the hedging derivative instrument in case the hedged instrument expires, is sold, terminated or exercised. In addition to discontinuing the hedge, any credit or equity hedge could be subject to the mandatory Trading Book allocation under Art. 104 (2) (b) and also be allowed to move to the Trading Book. Also, a documentation confirming that the hedging derivative has been discontinued is requested. As the discontinuation happens post the ECB approval to assign the derivative to the Banking Book, this requirement indicates, that an additional information to ECB is requested once the derivative is discontinued. If so, if this is requested for every single discontinued derivative, the requirement contradicts the nature of an approval for a group of positions versus single transactions. Considering that any discontinuation of the hedge happens post its initial assignment we do not think, this is covered by the intention of Art. 104 (4) CRR3.	The ECB O/D guide should focus on intial assignment and not cover any actions post initial assignment. Also, without clarification interdepence with mandatory TB allocation is unclear for net short credit/equity positions.	Deutsche Bank	Publish
7		36	Amendment	Section 3 paragraph 6 (iii) (a) is speaking of "hedge effectiveness and hedge relationship". The concept of "hedge effectiveness" is known under IFRS. However, in this case it cannot refer to IFRS since any derivative that is a designated and effective hedging instrument under IFRS does not qualify as derivative under IFRS and is therefore not subject to the presumed Trading Book allocation under Art 104 (2) (d). The demonstration of any form of "hedge effectiveness" should be allowed based on different concepts, e.g. CRR credit risk mitigation framework for RWA hedges in the Banking Book, econonmic hedging for non-RWA hedges or relying on the IRRBB framework for IRRBB hedges. Further as hedges for IRRBB purposes as well as banking book credit risk RWA are very detailed covered by existing regulation (e.g. IRRBB framework, CRR requirements for credit risk mitigation) we think, such derivatives should not be required to be subject to the ECB approval process under Art. 104 (4) CRR.	Withouth this clarification it is unclear, which concept of hedge effectiveness is referred to here. Also, we think a general carve out from the approval requirement under Art. 104 (4) CRR in the ECB options and discretions guide for IRRBB derivatives, Foreign Exchange Risk in the Banking Book (FXRBB) as well as credit risk mitigation derivatrives should be provided.	Deutsche Bank	Publish
8		37	Amendment	Section 3 paragraph 6 (vii) is redundant to (x) as the lacking trading intent is the justification for Banking Book assignment relevant for both (vii) and (x).	Resolve redundancy	Deutsche Bank	Publish
9		37	Amendment	Section 4 refers to the Trading Book assignment for hedge funds. The scope of hedge funds is unclear since CRR does not provide a clear definition of hedge funds.	Without this clarification the scope of this rule is unclear. We recommend to use the following definition: a hedge fund is defined as an EU AIF or Foreign AIF, provided the EU AIF or Foreign AIF employs leverage on substantial basis within the meaning of Artilce 111 of the Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012 ("AIFM Level 2 Regulation).	Deutsche Bank	Publish
10		38	Amendment	Section 4 paragraph 5 (v) is speaking of Art. 104 (4) and non-trading book management. As it is about hedge funds, it should be Art. 104 (5) and trading book management instead.	Remove typo	Deutsche Bank	Publish
1	Section II, Chapter 3	42-44	Clarification	We propose to align the Unexpected Loss % with the Guidance for the ECB Fast-track approval process. In the guidance, UL% is the one at inception and is assumed to be kept constant over time and does not evolve with portfolio amortisation. The allocated UL in the last year of the transaction is calculated using the outstanding portfolio size rather than the initial portfolio size to reflect the amortisation of the portfolio.	Without this clarification, it is not clear how regulatory UL is defined. With this proposed clarification, an alignment to the guidance provided for the ECB Fast-track approval process is achieved and thus, the same UL calculation are used which simplifies the process on bank and ECB side.	Deutsche Bank	Publish
2	Section II, Chapter 3	42-44	Clarification	We propose to align the end date of the securitisation with the Guidance for the ECB Fast-track approval process for the purpose of allocating expected and unexpected losses in this test. The end date should be the date of the time call (calculated as last day of the replenishment period + WAL) or the date of the clean-up call; whichever is first.	Without this clarification, it is not clear how the term 'whole life of securitisation' is defined. With this proposed clarification, an alignment to the guidance provided for the ECB Fast-track approval process is achieved and thus, the same end dates are used which simplifies the process on bank and ECB side.	Deutsche Bank	Publish
11	Section 2, Chapter 3, Paragraph 12(3)	46	Amendment	Paragraph 12(3) and Paragraph 13(8) require maintaining comprehensive lists of instruments. It should be clarified that the inventories should not include any information already provided in the other - to avoid repetition and redundancies.This is in order to reduce the operational burden on banks, in line with the European Commission committment to reduce reporting requirements for EU firms.	Preferably banks do not need to be required to maintain the inventories from Paragraph 12(3) and 13(8). If that is not acceptable, then any linkage between the two inventories should be avoided. E.g. Paragraph 12(3)(ii) mandates the inclusion of "pricing models/methodologies used to calculate sensitivities", which appears redundant as requried by Paragraph 13(8).	Deutsche Bank	Publish

12	Section 2, Chapter 3, Paragraph 12(10)	48	Amendment	Requiring as part of each annual internal review to include in the documentation a follow up of previous findings, results in an excessive and duplicated operational burden. Institutions have typically robust internal processes to monitor the remediation of all market risk related findings (e.g., internal audit, model validation, competent authority findings) which are regularly reported to senior management. In the dialogues between institutions and the competent authority the status of outstanding findings is a frequent topic in such dialogues. So this requirement increases the operational burden on banks. This undermines the European Commission committment to reduce reporting requirements for EU firms, without adding to financial stability or resilience. We recommend the following amendments to Paragraph 12(10): "For the purpose of the assessment of compliance with the specifications in Article 325c ... it is expected that the credit institution submits the following information to the ECB: (i) ... (ii) an audit report, signed by the head of the internal audit function of the institution and approved by the management body, describing the main outcomes of the SAQ, a summary of the findings identified, including their severity, and a corresponding remediation plan. Upon request from the competent authority, the institution shall provide the follow-up on the remedial actions derived from previous independent reviews."	Requiring as part of each annual internal review to include in the documentation a follow up of previous findings, results in an excessive and duplicated operational burden. We recommend that instead institutions make available that information upon request of the competent authority. This will help reduce operational costs.	Deutsche Bank	Publish
13	Section 2, Chapter 3, Paragraph 13(3)	50	Clarification	The ECB should clarify that if "already approved applications remain valid", any conditions or restrictions that were set at the time of the original approval will no longer be applicable with the publication of this revised EGOD. In particular, qualitative justifications should suffice for such usage. The industry seeks confirmation that the guide supersedes all previous obligations, which varied across banks. Firms should have the option to independently decide to adopt qualitative criteria and discontinue their quantitative processes, provided they have assessed and confirmed that their inventory of alternative definitions and justifications is adequately prepared.	In a number of cases, when the ECB approved the use of alternative sensitivities, it did so under certain conditions that varied between banks (for example, by imposing certain obligations on the monitoring process). Therefore, it is necessary to explictly mention that these conditions are no longer in effect.	Deutsche Bank	Publish
14	Section 2, Chapter 3, Paragraph 13(5)	50	Amendment	In Paragraph 13(5)(iii)(c), documentation requires a mention of whether the alternative sensitivity definition is “owned” by and independent risk unit. It has not been clarified what is meant by “owned”. As per Article 325t(a) and (b), reference is made to independent risk control unit in terms of usage for reporting profits and losses to senior management. Having alternative sensitivity ownership managed by an independent risk unit has not been included in CRR Article 325(t) and would introduce additional requirements beyond CRR Article 325(t)(1).	Paragraph 13(5)(iii)(c) should be amended to: (c) used by an independent risk unit	Deutsche Bank	Publish
15	Section 2, Chapter 3, Paragraph 13(6)	51	Amendment	The wording of "validation of the definition of alternative sensitivities" is not clear. Alternative sensitivities are deemed valid if they (i) are not materially different from the regulatory ones and (ii) are more appropriate from a qualitative point of view. The guide should clarify whether the validation function is expected to merely confirm (i) and (ii), and if so, that there is no need to reassess this validation periodically.	To prevent unclear internal validation efforts and varying standards across banks, the validation point must be brought in line with the criteria of appropriateness.	Deutsche Bank	Publish
16	Section 2, Chapter 3, Paragraph 13(7)	51	Amendment	Point 13(7) could be understood opposing to the notion of a qualitative assessment as in sections 13(1) and 13(2). It should be clarified that no distinct monitoring process is requried for alternative sensitivities if processes are already in place to monitor the performance and adequacy of their pricing models generally.	We suggest to amend this section to provide clarification and allow for broader options to achieve the intended objective. It says "regulatory non-compliance" which is too broad. We suggest to refer to CRR Article 325(t)(5) and (6) instead.	Deutsche Bank	Publish
17	Section 2, Chapter 3, Paragraph 13(8)(i)(b)	51	Deletion	Providing P&L reports for the alternative sensitivity use case does not an obvious added value. Therefore, this requirement increases the operational burden on banks. This undermines the European Commission committment to reduce reporting requirements for EU firms, without adding to financial stability or resilience. Specifically, this stemms from the part of the text that says "(8)(i)(b)the current and last three relevant risk management and P&L reports (daily, monthly, quarterly);" We recommend eliminating that requirement.	We see limited added value for providing P&L reports for the alternative sensitivity use case. This increases operational burden. The requirement should be eliminated	Deutsche Bank	Publish
18	Section 2, Chapter 3, Paragraph 13(5), (8)(ii)	51	Amendment	To prevent excessive documentation efforts, it should be acknowledged that banks may already have sufficient documentation regarding their pricing models (from which alternative sensitivities are derived) that can be provided to the ECB. There is no need to set up and maintain a complex inventory to demonstrate the appropriateness of the sensitivities used. Similarly, internal audits should be decoupled from the ongoing monitoring activity since these could operate at different frequencies. Furthermore, we propose removing the requirements outlined in (8)(ii), as they would fall under the supervision of the regular internal audit as described in Chapter 3, Section 12 on Internal Review.	The requirement for a specific inventory of sensitivities should be replaced by a requirement of "auditability" of the calculation and appropriateness of these sensitivities.	Deutsche Bank	Publish
19	Section 2, Chapter 3, Paragraph 16	52	Clarification	New paragraph should be inserted to handle applications submitted prior to the publication of the final version of the guide.	It should be clarified that already approved applications will remain valid.	Deutsche Bank	Publish
20	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." 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 simpler 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 IRB risk weights, yet ~~it~~ 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 be able to utilize them for calculating CVA RWAs. 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%. This approach does not require approval from the ECB and is not bound by the same constraints.	We suggest the following amendment to the wording: "(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).	Deutsche Bank	Publish

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ECB Regulation on Options and Discretions under Union law

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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	Personal data

1	Transitional arrangements for ECAI credit assessments of institutions	Regulation	We welcome the extension of the transition period up to July 26 provided for by the consultation. However, given the low availability of compliant ratings in the market, we consider that ECB should be ready to extend this deadline until minimum 3 large agencies provide compliant ratings and this should be reflected in the recital of the regulation. It is important to allow the ESAs to conduct an ECAI mapping process and also allows CRAs such as S&P and Moodys to get their new rating product ready for market (we think that relying on a single rating would not only be problematic from the perspective of counterparty coverage but would also create issues over quality/ cost). Currently Fitch is the only rating agency that has developed a new XGS rating (our understanding is that other CRAs such as Moodys and S&P are developing proxy step ratings - however it is not clear whether these will be compliant with the provisions of CRR3 Article 138(g), and therefore whether institutions will be able to use these with confidence.	ECB should be ready to extend this deadline until minimum 3 large agencies provide compliant ratings	Deutsche Bank	Publish

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ECB Guideline on Options and Discretions under Union law

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- **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	Personal data

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;**
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