



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

PUBLIC CONSULTATION

Draft Addendum to the ECB Guide on Options and Discretions available in Union Law

## Template for comments

Institution/Company

Italian Banking Association (ABI)

Contact person

First name

██████████

Surname

██████

E-mail address

████████████████████

Telephone number

██████████

Please tick here if you do not wish your personal data to be published.

Please make sure that each comment only deals with a single issue.

In each comment, please indicate:

- the relevant article/chapter/paragraph, where appropriate
- whether your comment is a proposed amendment, clarification or deletion.

If you require more space for your comments, please copy page 2.

PUBLIC CONSULTATION

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**Template for comments**

Name of Institution/Company    Italian Banking Association (ABI)  
Country                                Italy

**Comments**

Draft Addendum	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	Consolidated supervision and waivers of prudential requirements - capital waivers	Article 7 CRR	Deletion	<p>ECB proposal adds the following criteria to CRR Article 7(1) (d): “in assessing an application for a capital waiver the ECB will ensure that considerations related to the leverage ratio are taken into account, given that pursuant to Article 6(5) of the CRR granting such waiver will also automatically waive the leverage requirement at the same level of the group structure.”</p> <p>As the CRR does not foresee a leverage ratio as a condition for granting capital waivers and taking into account that the leverage</p>



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ratio as prudential requirement will become applicable only as of 2018, we request, until this date, the ECB to not add the leverage assessment in assessing an application for a capital waiver

The rationale of our request is the following

Assessment of the leverage ratio is not covered by the CRR level 1 text

Article 7(1) of the CRR does not allow making the granting of the solo capital waiver subject to an assessment of the leverage ratio. The CRR level 1 text is clear about the conditions at the presence of which such waiver can be granted. Leverage is neither directly nor indirectly mentioned in these conditions. Having to respect and apply the Level 1 legislation, in our opinion ECB cannot impose further conditions not covered by Article 7(1).

There is absolutely no relationship between the sentence the ECB is adding and point (d) of Article 7(1). If the legislator had the intention to consider the leverage when granting a capital waiver he would have inserted this as a further criterion. A reason for not doing so may be that the leverage ratio becomes applicable only as of 2018.

The existence of the same conditions for the granting a capital waiver at solo level is of high importance for maintaining a level playing field among banks. Submitting the granting of a capital waiver to the assessment of the leverage ratio requirement by the ECB would only affect banks of the banking union and for the

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moment only the ones which are under its direct supervision. Different interpretations within the Single Market will not only raise substantial level playing field issues, but are also against the aim of a single rule book.

Assessment process is not clear

The assessment which the ECB indicates it will follow in deciding whether to grant a capital waiver and referred to in point 1 on page 3, Chapter 1 is not clear: it seems to address situations where the controlled entity might incur (in funding) problems and cannot use the liquidity posted with the holding company. In reality we presume that the entity could, also in a stressed scenario close or reduce the intra-group funding if/when needed, whereas the holding group has, at Group level, contingency funding measures in place to deal with a crisis. The issue seems to be not so much at the individual entity level, but rather at Group level, if any.

Legitimate expectations are not respected

Until November 2014 capital waivers were granted by national competent authorities without considering the leverage ratio. As no change to Article 7(1) of the CRR has happened since then, banks should be able to rely on already granted waivers. In other words the ECB should respect their legitimate expectations that waivers that were granted in compliance with CRR and thus in a fully legitimate manner, continue to exist.

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☒	Consolidated supervision and waivers of prudential requirements: Intragroup exposures & Leverage ratio (Article 429 (7) CRR)	Article 429 (7) CRR	Deletion	We challenge the view taken in the draft Addendum that Article 113 (6) CRR in conjunction with Article 429 (7) CRR would allow the supervisor to make the granting of a zero risk weight for intragroup exposures subject to an assessment of the leverage ratio. The text of Article 113 (6) CRR is indeed very precise about the various conditions which need to be fulfilled to grant a zero risk weighting, from which it needs to be concluded that the list of conditions which it puts forward is meant to be exhaustive. Leverage is neither directly nor indirectly mentioned in Article 113 (6) CRR.
☒	Consolidated supervision and waivers of prudential requirements: Intragroup exposures & Leverage ratio (Article 429 (7) CRR)	Article 429 (7) CRR	Clarification	it should be given proper consideration to the specific situation of banking groups made up by local (often small) co-operative banks and their central institutions, whereby the former do not have a direct access with the Central Bank and the payment and settlement systems and capital/money markets. Thus, the central institutions perform central bank refinancing operations and other secured funding transactions on behalf of the local co-operative banks.
☒	Capital requirements: Calculation of risk-weighted exposures (Article 113 (6) CRR)	Article 113 (6) CRR	Clarification	While we welcome the indication provided by the ECB during the public hearing that the guidance specified in the draft Guide would not affect standing authorizations granted in the past by national authorities, in order to ensure a level playing field, we believe that specifying much stricter criteria than those applied in the past for granting the waiver would disproportionately affect newly applying institutions and should thus be avoided.

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☒	Liquidity: Collateral outflows (Article 30 (2) Delegated Regulation)	Article 30 (2) Delegated Regulation	Clarification	The materiality assessment is based on "total outflows". It is unclear whether total outflows refer to weighted or unweighted outflows and whether total outflows refer to gross outflows or net outflows (i.e. after taking inflows into account). This should be clarified in the Guide.
☒	Liquidity: Collateral outflows (Article 30 (2) Delegated Regulation)	Article 30 (2) Delegated Regulation	Amendment	The 1%-threshold is considered considerably too low given that only "material" outflows are to be captured. The threshold should be raised to at least 5%.
☒	Liquidity: Cap on Inflows (Article 33 (2) Delegated Regulation))	Article 33 (2) Delegated Regulation	Clarification	<p>The draft Addendum comprehensively addresses the potential danger of regulatory arbitrage between waiver and inflow cap exemption when combining Art 33/2- and Art 34-applications. However, from the discussion in the Addendum it is not clear, why such danger would exist.</p> <p>In essence, considering two entities (parent, subsidiary), two cases can be distinguished: a. parent is liquidity providing/subsidiary is liquidity receiving or b. vice versa. The liquidity providing entity receives inflows from on- or off-balance sheet items which could be exempted from the inflow cap.</p> <p>Consider a situation between a parent and a subsidiary where the subsidiary is the liquidity-providing entity (i.e. places monies with the parent and receives inflows from these placements) and the parent is the liquidity-receiving entity (i.e. receives monies with corresponding outflows). In such cases the subsidiary could apply for an inflow cap exemption for such intra-group inflows with lower liquidity buffer requirements and respective</p>

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improvements in its solo LCR. The solo LCR situation for the parent remains the same (no improvement in LCR). This is different to the waiver situation, where the LCR would be calculated for both entities (parent, subsidiary) together and the waiver LCR would be different from (i.e. would typically be higher than) the solo LCR of the parent.

Where is regulatory arbitrage by applying for the Inflow Cap Exemption in this case?

The addendum also makes multiple references to Art 34 in the context of regulatory arbitrage. But given that Art 34 is strictly limited to off-balance sheet items, i.e. to the undrawn portion of received lines, and does not refer to (more material) on-balance sheet items, the danger of regulatory arbitrage seems (very) limited.

In alternative, an appropriate material threshold (e.g. in terms of the amount of the intragroup inflows to total outflows ratio) could be set by the ECB.

Conclusion: More transparency on the cases that ECB has identified where such regulatory arbitrage could arise would be helpful to better understand the issue. Based on the current version in the draft Addendum the regulatory arbitrage issue remains unclear.



Liquidity: Cap on  
Inflows (Article 33

Article 33 (2)  
Delegated  
Regulation

Clarification

We make reference to the sentence on p.8 "In this regard, the ECB would consider it appropriate to fully exempt from the cap only those intragroup inflows that are also subject to a

(2) Delegated Regulation))	preferential treatment under Article 34 of Commission Delegated Regulation (EU) 2015/61”.			
	<p>Given the limited scope of Art 34 (only received lines) this would mean that only inflows from received lines would be subject to the inflow cap exemption. We strongly oppose this view which is not in line with the scope of Art 33/2 lit a DA LCR. Art 33/2 lit a DA LCR refers to intra-group inflows from both, on- and off-balance sheet items and is not limited to off-balance sheet items.</p> <p>Conclusion: It should be clarified that both, on- and off-balance sheet items are exemptable from the Inflow Cap.</p>			
☒	Liquidity: Cap on Inflows (Article 33 (2) Delegated Regulation)	Article 33 (2) Delegated Regulation	Clarification	<p>The Draft Addendum to the ECB Guide on ONDs states – under paragraph 14 - that “the ECB is aware that under certain conditions the exercise of this specific option on liquidity requirements, when considered in combination with the option in Article 34 of Commission Delegated Regulation (EU) 2015/61” (...) “could, from the liquidity receiving entity’s perspective, produce a comparable effect to an Article 8 CRR waiver” (...). Moreover, the Draft Addendum reports that in cases where the conditions for the Article 8 CRR waiver cannot be met for reasons that are not under the control of the institution or the group, or where the ECB is not satisfied that an Article 8 CRR waiver may actually be granted, “the JST will consider instead the possibility of granting a combination of the preferred treatment under Article 34 of Commission Delegated Regulation (EU) 2015/61 and the exemption to the cap inflows pursuant to Article 33(2)(a) of Commission Delegated Regulation (EU) 2015/61”.</p>





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Conclusion: in order to provide institutions with a more complete view on liquidity issues, it is advisable to receive better specifications on the conditions under which the combination of the options of Article 34 and Article 33 of Commission Delegated Regulation (EU) 2015/61 can produce a comparable effect to Article 8 CRR. For the same reasons, it would be important to understand the criteria, systemic and idiosyncratic, that could lead the JST to approve the combination of Articles 33 and 34 of Commission Delegated Regulation (EU) 2015/61 while the ECB did not allow the Art.8 CRR waiver

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We make reference to the penultimate paragraph on p. 9 “In cases where the conditions for an Article 8 waiver cannot be met for reasons that are not under the control of the institution or the group, or where the ECB is not satisfied that an Article 8 waiver may actually be granted, the JST will consider instead the possibility of granting a combination of the preferential treatment under Article 34... and the exemption to the cap on inflows ...”



Liquidity: Cap on  
Inflows (Article 33  
(2) Delegated  
Regulation)

Article 33 (2)  
Delegated  
Regulation

Clarification

This sentence seems to introduce an hierarchy of applications. In first instance, banks have to apply for a waiver and only if a waiver approval is not possible, banks are allowed to apply for an inflow cap exemption. We strongly oppose such application hierarchy as it is neither justified from a regulatory/legal perspective (neither CRR nor DA LCR contain any hint to such hierarchy; quite to the contrary, both applications are treated equally) nor from an economic perspective (see discussion above regarding non-existence of regulatory arbitrage danger).

Conclusion: It should be clarified that no application-hierarchy is introduced by ECB.

☒	Liquidity: Cap on Inflows (Article 33 (2) Delegated Regulation)	Article 33 (2) Delegated Regulation	Clarification	<p>We make reference to (2) on p. 10 “Where the exemption under Article 33(2) of Commission Delegated Regulation (EU) 2015/61 is not requested in combination with a preferential treatment pursuant to Article 34 of Commission Delegated Regulation (EU) 2015/61, the JST will still consider the potential impact of this exemption on the LCR of the institution and its liquidity buffer, and the type of intragroup inflows that would be exempted from the 75% cap.”</p> <p>It remains unclear, what is meant by “the JST will ... consider”. Does it mean that JST will not give approval to inflow cap exemption applications simply based on the fact that the buffer requirement would be deemed to be too low? Would it mean that JST prescribes a minimum liquidity buffer irrespective of the fact that exemptable inflows would allow a lower buffer requirement?</p> <p>Conclusion: It should be clarified that no minimum buffer requirement is envisaged by ECB in the context of inflow cap exemption applications.</p>
☒	Liquidity: Cap on Inflows (Article 33 (2) Delegated Regulation)	Article 33 (2) Delegated Regulation	Amendment	<p>We make reference to the list of requirements listed on p. 10. Requirement (iii) which forces banks to receive an ECB approval for any contractual change in the underlying agreements is deemed to be too harsh.</p>



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				Conclusion: The requirement should be amended in a way that notification to ECB on any contractual changes would be sufficient.
<input checked="" type="checkbox"/>	Liquidity: Cap on Inflows (Article 33 (2) Delegated Regulation)	Article 33 (2) Delegated Regulation	Amendment	<p>We make reference to the following sentence on p. 13 “In this case, other intragroup deposits could benefit from the exemption only where, in accordance with national law or other legally binding provisions regulating groups of credit institutions, the deposit-receiving entity is obliged to hold or invest the deposits in Level 1 liquid assets as defined in letters (a) to (d) of Article 10(1) of Commission Delegated Regulation (EU) 2015/61.”</p> <p>Conclusion: The requirement to hold received monies in the form of Level 1 assets should be amended as it is not in line with Art 33/2 lit b DA LCR which does not specify such requirement. An Art 113/6-approval should be sufficient to receive the an Art 33/2 lit b DA LCR-approval.</p>
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