



**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

Deutsche Bank

#### Contact person

First name

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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.



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### Template for comments

Name of Institution/Company Deutsche Bank

Country Germany

#### Comments

Draft Addendum	Issue	Article	Comment	Concise statement why your comment should be taken on board
<input checked="" type="checkbox"/>	Cap on inflows: application proces unclear	3334	Clarification	Request for clarification: The application process is not clear – will there be a specific cap exemption application or should firms apply via discussions with their Joint Supervisory Team?  Are firms required to await decisions being made on Article 8 waiver applications before making applications under article 33(2) and 34?



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<input checked="" type="checkbox"/>	cap on inflows: connection between art 8 waiver and 33(2)-34	33/34	Clarification	<p>Request for clarification: Pages 9-10: '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 of Commission Delegated Regulation (EU) 2015/61 and the exemption to the cap on inflows pursuant to Article 33(2)(a) of Commission Delegated Regulation (EU) 2015/61.</p> <p>As already stated, a combination of the options under Article 33(2)(a) and Article 34 of Commission Delegated Regulation (EU) 2015/61 can only be granted where it does not conflict with the approved policy to be applied to a waiver under Article 8 of the CRR concerning the same entities.'</p> <p>Argumentation: There are two points of clarification that we would like to raise within this section:</p> <p>First, does the ECB intend to allow firms, which have not applied for an Article 8 waiver the opportunity, to apply for Article (33(2) and 34 waivers, or does the ECB intend only to grant Article 33(2) and 34 waivers if and only if the firm has applied for an Article 8 waiver but has failed (or is likely to fail) to obtain that an Article 8 waiver?</p> <p>Second, if a firm has applied for, and has failed (or is likely to</p>
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				<p>fail), to obtain an Article 8 waiver, the ECB indicates that it would consider granted an Article 33(2) and 34 waiver if (1) the failure to obtain an Article 8 waiver were due to (a) circumstances beyond the firm's control or (b) "where the ECB is not satisfied that an Article 8 waiver may actually be granted"; and (2) where the granting of an Article 33(2) and 34 waiver would not conflict with the policy for granting the Article 8 waiver. Can the ECB provide clarity or an example as to how a firm could satisfy both conditions (1) and (2) at the same time, assuming that the ECB applies the policy for granting Article 8 waivers consistently?</p>
				<p>Request for clarification: 14 (2) (ii) There are no provisions that would allow the intragroup counterparty providing the inflows to withdraw from its contractual obligations or impose additional conditions.</p>
<input checked="" type="checkbox"/>	cap on inflows: definiton of "provisions"	33/34	Clarification	<p>Argumentation: We propose to clarify that "provisions" do not mean provisions in company or other law that could allow Investment Grade counterparty to withdraw from its contractual agreements (eg in the event of its insolvency / resolution – Resolution Authorities have the power to suspend payment obligations in resolution). There is a carve out in the capital section for national company law provisions as referred to by the ECB in footnote 3 of the consultation document.</p>
<input checked="" type="checkbox"/>	cap on inflows: definition of "substantially 14 (2) iii	33/34	Clarification	<p>Request for clarification: 14 (2) iii. The terms of the contractual agreement giving rise to the inflows cannot be changed substantially without the prior approval of the ECB.</p>

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				<p>Argumentation: The definition of "substantially" is not clear? it is also unclear as to whether 'business as usual' transactions, such as renewals of lines, are exempt from this requirement. It would be helpful if the ECB could define a list of 'relevant transactions' which would require ECB approval.</p>
				<p>Request for amendment: 14 (2) (v) The applicant entity is able to demonstrate that the inflows are also properly captured in the contingency funding plan of the intragroup counterparty.</p>
<input checked="" type="checkbox"/>	cap on inflows: connection to contingency funding plans	33/34	Amendment	<p>Should be changed into v) The applicant entity is able to demonstrate that the inflows are also properly captured in the contingency funding plan of the intragroup counterparty. IF THE INTRAGROUP COUNTERPARTY IS THE PARENT ENTITY THEN THE GROUP/PARENT CONTINGENCY FUNDING PLAN SHOULD APPLY.</p> <p>Argumentation: Not all potential intragroup counterparties are required to produce contingency funding plans. Therefore if either party is the group's ultimate parent entity, the group contingency funding plan should be utilised to satisfy this criteria.</p>
<input checked="" type="checkbox"/>	cap on inflows: clarity on "both	33/34	Clarification	<p>Request for clarification: 14 (2) (vii) "...a sound liquidity position could be considered to</p>

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	institutions"			exist if the liquidity management of both institutions as evaluated in the SREP is deemed to be of high quality."  Argumentation: The reference to "both institutions" needs further explanation since they need not both be institutions, but can be "entities" as well. The ECB may like to consider replacing "institutions" with "entities" in this sentence.
				Request for clarification 14(2)ix. The applicant institution should be able to factor in the impact of granting the exemption on its risk management systems and monitor how a potential withdrawal of the exemption would impact their liquidity risk position and their LCR.
<input checked="" type="checkbox"/>	cap on inflows: impact on systems	33/34	Clarification	Argumentation: From the current drafting it is unclear whether firms would need to maintain the ability to factor in the impact of granting the exemption on risk management systems on a continuous basis after a waiver is granted? Would firms need actively to monitor (or maintain an ability actively to monitor) how a withdrawal of the exemption would impact their liquidity risk position and LCR on a continuous basis after a waiver is granted?
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