EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Public consultation

On revisions to the ECB Guide on options and discretions available in Union law

November 2024

Contents

Section I
Overview of the Guide on options and discretions

1 Purpose

1. This Guide sets out the approach of the European Central Bank (ECB) concerning the exercise of options and discretions provided for in the European Union legislative framework (Regulation (EU) 575/2013 of the European Parliament and of the Council[1] (CRR) and Directive 2013/36/EU of the European Parliament and of the Council[2] (CRD)) and which concern the prudential supervision of credit institutions.

2. The Guide was first published in 2016. It was revised and updated in 2022 to reflect changes to the CRR and the CRD introduced by means of Regulation (EU) 2019/876 of the European Parliament and of the Council[3] and Directive (EU) 2019/878 of the European Parliament and of the Council[4] (the "CRRII-CRDV package"). The current version has been further revised and updated to reflect changes to the CRR and CRD introduced by Regulation (EU) 2024/1623 of the European Parliament and of the Council[5] and Directive (EU) 2024/1619 of the European Parliament and of the Council[6] (the "CRRIII-CRDVI package").

3. The Guide aims to provide coherence, effectiveness and transparency regarding the supervisory policies that will be applied in supervisory processes within the Single Supervisory Mechanism (SSM) as far as the significant credit institutions are concerned. In particular, it aims to assist the Joint Supervisory Teams (JSTs) in the

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1 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1). Some options and discretions are also included in Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

2 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

3 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

4 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

5 Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (OJ L 2024/1623, 19.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1623/oj).

6 Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (OJ L 2024/1619, 19.6.2024, ELI: http://data.europa.eu/eli/dir/2024/1619/oj).

performance of their tasks with regard to the principles the ECB intends to follow in supervising significant credit institutions.

2 Scope, content and effect

1. This Guide is relevant for credit institutions that have been designated as significant credit institutions by the ECB.

2. The Guide sets out the general aspects which will be taken into account by the ECB in determining the prudential requirements for significant credit institutions. The policies set out in this Guide will be used as guidance by the JSTs when assessing individual requests and/or decisions that would involve the exercise of an option or discretion.

3. The structure of the Guide mirrors the structure of the relevant legislative acts (e.g. the CRR/CRD). The Guide should be read in conjunction with the relevant legal texts.

4. The terms used in the Guide have the same meaning as defined in the CRR/CRD and Council Regulation (EU) No 1024/2013[7] (SSM Regulation), with the exception of cases where a term is specifically defined in this Guide for the purposes of this Guide only.[8]

5. The references to the CRD and the CRR should be considered as referring to the CRR and the CRD as amended by all EU legislation in force as of the date of publication of the revised version of the Guide on the ECB's banking supervision website. The references should also be considered as including any regulatory or implementing technical standards provided for in those acts which have already been adopted, or as soon as they are adopted by the European Commission and published in the Official Journal of the European Union. Likewise, references to Commission Delegated Regulation (EU) 2015/61, concerning the liquidity coverage ratio, should be considered as referring to that act as amended by all relevant legislation[9] in force as of the date of publication of the revised version of the Guide on the ECB's banking supervision website. In accordance with the CRD, national implementing law must also be taken into account (see also paragraph 10 below).

6. The final policy choices reflected in this Guide aim to achieve the objectives of the SSM, as specified in recital 12 of the SSM Regulation, i.e. to "*ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is*

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7 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

8 For the avoidance of doubt, for the purposes of supervision on a consolidated basis, the term credit institution should be understood within the meaning of Article 11(2) of the CRR, where applicable.

9 Notably, Commission Delegated Regulation (EU) 2018/1620 of 13 July 2018 amending Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 271, 30.10.2018, p. 10).

applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality". In this context, the policy choices take into account not only the specific features of individual credit institutions, but also the specific features of their business models, as well as indicators related to territories of the participating Member States. Furthermore, the assessment that the ECB will carry out in individual cases will respect the specifics and particular features of significant credit institutions and different markets.

7. This Guide does not establish new regulatory requirements and the specifications and principles included herein should not be construed as being legally binding rules.

8. The guidance included in each policy choice sets out the approach to be followed by the ECB in carrying out its supervisory tasks. If, however, in specific cases, there are factors that justify departing from this guidance, the ECB is empowered to take a decision that departs from the general policy established in this Guide, provided that clear and sufficient reasons are provided for the decision. The rationale of this divergent policy choice must also be compatible with the general principles of EU law, in particular equal treatment, proportionality and the legitimate expectations of supervised entities. This is consistent with established case-law of the Court of Justice of the European Union where internal guidance, such as this Guide, is defined as rules of practice from which EU institutions may depart in justified cases[10].

9. The ECB reserves the right to review the policy guidance set out in this document to take account of changes in legislative provisions or specific circumstances, as well as the adoption of specific delegated acts that may regulate a specific policy issue in a different way. Any changes will be made public and take due account of the principles of legitimate expectations, proportionality and equal treatment referred to above.

10. When setting out its policy stance as provided for in this Guide, the ECB acts within the limits of applicable EU law. In particular, as regards cases where this Guide refers to options and discretions in the CRD, the ECB sets out its policy stance without prejudice to the application of national legislation transposing directives, in particular the CRD, where a relevant policy choice is already adopted in such national legislation. The ECB will also abide by the applicable European Banking Authority (EBA) Guidelines, within a "comply or explain" framework pursuant to Article 16 of Regulation (EU) No 1093/2010[11].

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[10] See, indicatively, paragraph 209 of the judgement of the Court of Justice of the European Union of 28 June 2005 in Joined Cases C-189/02, C-202/02, C-205/02 to C-208/02 and C-213/02: "*The Court has already held, in a judgment concerning internal measures adopted by the administration, that although those measures may not be regarded as rules of law which the administration is always bound to observe, they nevertheless form rules of practice from which the administration may not depart in an individual case without giving reasons that are compatible with the principle of equal treatment. Such measures therefore constitute a general act and the officials and other staff concerned may invoke their illegality in support of an action against the individual measures taken on the basis of the measures.*"

[11] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

11. Finally, the policies defined in this Guide are without prejudice and are not applicable to the options and discretions available in EU law and already exercised by the ECB under Regulation (EU) 2016/445[12].

3 History of consultations on this Guide

This Guide has been subject to the following public consultations:

- The first version of this Guide was consulted on between 11 November and 16 December 2015.
- A second consultation on the approach to the recognition of institutional protection schemes for prudential purposes was carried out between 19 February and 15 April 2016.
- An addendum to the ECB Guide was consulted on between 18 May and 21 June 2016.
- A revised version of the Guide, which took into account changes to the Union legislative framework introduced by the CRRII-CRDV package, was consulted on between 29 June and 30 August 2021.
- A further revision of the Guide to account for changes to the Union legislative framework introduced by the CRRIII-CRDVI package was subject to consultation between [DATE] and [DATE].

4 Application of changes to this Guide concerning market risk

Commission Delegated Regulation (EU) 2024/C(2024)5139 of 24 July 2024[13] amending Regulation (EU) No 575/2013 with regard to the date of application of the own funds requirements for market risk defers the date of application of those requirements until January 2026. Additionally, the EBA in its no-action letters on the boundary between the banking book and the trading book[14] expressed its opinion on the application of the provisions relating to the boundary between the trading book and the banking book and on the internal risk transfer between books, as referred to in Article 3(6) of the CRR. The EBA advised the competent authorities not to prioritise any supervisory or enforcement action in relation to those requirements until the adoption of the legislative proposal achieving the full implementation of the

[12] Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

[13] See the press release “Commission proposes to postpone by one year the market risk prudential requirements under Basel III in the EU, dated 24 July 2024.

[14] See the two press releases: (i) “EBA publishes a no-action letter on the boundary between the banking book and the trading book provisions”, dated 27 February 2023.and (ii) “The EBA responds to the European Commission’s Delegated Act postponing the application of the market risk framework in the EU, dated 12 August 2024.”.

Fundamental Review of the Trading Book, also taking into account any transitional period it may provide for.

Accordingly, the parts of this Guide relating to the trading book and non-trading book classification exemption, and to the internal review of usage of the alternative standardised approach, refer to the amendments to the market risk framework introduced by the CRRIII-CRDVI package once those amendments have become applicable. For the same reason, and until that time, the ECB will continue to apply the provisions related to calculation of value-at-risk (Article 366(4) of the CRR) in the manner referred to in this Guide. By contrast, the requirements relating to permission to use the alternative definitions of sensitivities (Article 325t(5) and (6) of the CRR) apply to the current transitional reporting phase of the implementation of the Fundamental Review of the Trading Book, without deferred application, and so are currently applied by the ECB as set out in the relevant part of this Guide.

5 Options and discretions exercised in exceptional circumstances or in support of monetary policy

1. Regulation (EU) 2019/876 and Commission Delegated Regulation (EU) 2018/1620 introduce a number of options and discretions that may be exercised in exceptional circumstances or in support of monetary policy. These include:

   - with regard to the liquidity coverage ratio (LCR) requirement, the waiver of certain transactions from the unwind mechanism provided for in Article 17(4) of Commission Delegated Regulation (EU) 2015/61;
   - with regard to the net stable funding ratio (NSFR) requirement, the waiver of the impact of certain derivative contracts provided for in Article 428d(6) of the CRR and the preferential treatment of assets associated with certain non-standard, temporary operations conducted by central banks provided for in Articles 428p(7) and 428aq(7) of the CRR;
   - with regard to the leverage ratio, the waiver to exclude certain central bank exposures from the calculation of the leverage ratio provided for in Article 429a(5) of the CRR.

2. The ECB does not expect that institutions make applications to it in relation to these options and discretions. Instead, the ECB, acting as competent authority, will exercise these options and discretions in exceptional circumstances and under the conditions set forth by the relevant legislative provisions, in consultation with, or subject to the approval of, the relevant central bank, as appropriate.

Section II
The ECB's policy for the exercise of options and discretions in the CRR and the CRD

This section sets out the specific policy guidance that the ECB intends to follow when assessing individual applications by supervised credit institutions which would involve the exercise of the options and discretions included herein. The purpose of this section is to assist the JSTs in their supervisory tasks and to inform credit institutions and the general public about the ECB's policy in this area in the interests of openness and transparency.

Chapter 1
Consolidated supervision and waivers of prudential requirements

1. This chapter sets out the preferred policy choice of the ECB on the general principles of consolidated supervision, as well as on waivers from certain prudential requirements.

2. Articles 6 to 24 of Part One of the CRR, as well as Commission Delegated Regulation (EU) 2015/61, set out the relevant legislative and regulatory framework.

3. DISCRETION TO EXCLUDE ENTITIES FROM THE FINANCIAL HOLDING COMPANY DEFINITION (Article 4(1), point (20), of the CRR)

   The ECB will consider whether to exercise this discretion on a case-by-case basis, taking into account the EBA consultation outcome and the Article 18(10) CRR report by the EBA to the European Commission on the completeness and appropriateness of the definitions and provisions of the CRR concerning the supervision of all types of risks to which institutions are exposed at a consolidated level, where relevant.

4. DEROGATION FROM THE APPLICATION OF PRUDENTIAL REQUIREMENTS ON AN INDIVIDUAL BASIS (Article 7 of the CRR)

   The application of prudential requirements may be waived for subsidiaries of credit institutions, as well as parent credit institutions, where both the subsidiary and the parent credit institution are authorised and supervised in the same Member State, following a case-by-case assessment and provided that the conditions set out in Article 7(1), (2) and (3) of the CRR are satisfied.

   For the purposes of this assessment, the ECB will consider the following factors.

- **Article 7(1) of the CRR, on the waiver of requirements for subsidiary credit institutions**

(1) To assess whether the condition laid down in Article 7(1), point (a), that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the subsidiary's parent undertaking has been met, the ECB plans to verify that:

(i) the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;

(ii) the formal decision-making process regarding the transfer of own funds between the parent undertaking and subsidiary ensures prompt transfers;

(iii) the by-laws of the parent and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the parent undertaking;

(iv) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(v) no third parties[15] are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(vi) the grant of a waiver has duly been taken into account in the recovery plan and, if any, the group financial support agreement;

(vii) the waiver has no disproportionate negative effects on the resolution plan;

(viii) the common reporting framework (COREP) "Group Solvency" template (Annex I to Commission Implementing Regulation (EU) No 680/201416), which aims to provide a global view of how risks and own funds are distributed within the group, shows no discrepancy in this regard.

(2) In assessing compliance with the requirement laid down in Article 7(1), point (b), of the CRR that either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest, the ECB will take into account whether:

(i) the credit institutions comply with the national legislation implementing Title VII, Chapter 2, of the CRD;

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15 Third parties are any party that is not the parent, a subsidiary, a member of their decision-making bodies or a shareholder.

16 Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

(ii) the supervisory review and evaluation process (SREP) for the parent undertaking shows that the arrangements, strategies, processes and mechanisms it has implemented ensure the sound management of its subsidiaries;

(iii) the waiver has no disproportionate negative effects on the resolution plan;

(iv) with regard to risks being of negligible interest, the subsidiary's contribution to the total risk exposure amount does not exceed 1% of the total exposure amount of the group or its contribution to total own funds does not exceed 1% of the total own funds of the group17. (Nonetheless, in exceptional cases the ECB may apply a higher threshold if duly justified. In any case, the sum of the contributions of the subsidiaries considered negligible in terms of the total risk exposure amount must not exceed 5% of the total exposure amount of the group and their contributions to total own funds must not exceed 5% of the total own funds of the group.)

(3) In assessing compliance with the requirement laid down in Article 7(1), point (c), that the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary, the ECB intends to take into account whether:

(i) senior management of the parent undertaking is sufficiently involved in strategic decisions, setting the risk appetite and the risk management of the subsidiary;

(ii) the risk management and compliance functions of the subsidiary and parent undertaking fully cooperate (e.g. the control functions of the parent have easy access to all the necessary information from the subsidiary);

(iii) the information systems of the subsidiary and parent undertaking are integrated or, at least, fully aligned;

(iv) the subsidiary to be waived complies with the group risk management policy and the group risk appetite framework (the limit system in particular);

(v) the SREP for the parent undertaking does not show deficiencies in the area of internal governance and risk management.

(4) In assessing compliance with the requirement laid down in Article 7(1), point (d), that the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary, the ECB plans to verify that there are no side agreements that impede the parent undertaking from imposing any measures necessary to steer the group towards compliance with prudential requirements.

(5) In assessing an application for a prudential waiver in accordance with Article 7(1) of the CRR, the ECB will also take into account considerations

17 Commission Implementing Regulation (EU) No 680/2014, Annex II, Part II, paragraph 37.

related to the leverage ratio, given that pursuant to Article 6(5) of the CRR granting such a waiver will also automatically waive the leverage requirement at the same level of the group structure.

- **Article 7(3) of the CRR, on the waiver of requirements for parent institutions**

(1) To assess whether the condition laid down in Article 7(3), point (a) – that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State – has been met, the ECB plans to verify that:

(i) the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;

(ii) the formal decision-making process regarding the transfer of own funds to the parent credit institution in a Member State ensures prompt transfers;

(iii) the by-laws of the parent and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities to the parent credit institution;

(iv) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(v) no third parties are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(vi) the grant of a waiver has duly been taken into account in the recovery plan and, if any, the group financial support agreement;

(vii) the waiver has no disproportionate negative effects on the resolution plan;

(viii) the COREP "Group Solvency" template, which aims to provide a global view of how risks and own funds are distributed within the group, shows no discrepancy in this regard.

(2) In addition to these specifications, in assessing the condition referred to in Article 7(3), point (a) – that there is no current or foreseen material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State – the ECB will take into account whether:

(i) the own funds held by subsidiary institutions located in the European Economic Area (EEA) are sufficient to grant the waiver to the parent institution (i.e. the granting of the waiver should not be justified on the basis of resources coming from third countries, unless official EU recognition of the equivalence of the third country is available and there are no other impediments);

(ii) the minority shareholders of the subsidiary institutions do not together hold voting rights that would allow them to block an agreement, decision or act of the general meeting under the applicable national company law;

(iii) foreign exchange restrictions, if any, do not prevent the prompt transfer of own funds or repayment of liabilities.

(3) In assessing compliance with the requirement laid down in Article 7(3), point (b), that the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State, the ECB intends to take into account whether:

(i) senior management of the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision is sufficiently involved in strategic decisions, setting the risk appetite and the risk management of the parent institution;

(ii) there is full cooperation between the risk management and compliance functions of the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision and the parent institution (e.g. the control functions of this entity have easy access to all the necessary information of the parent institution);

(iii) the information systems of the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision and those of the parent institution are integrated or, at least, fully aligned;

(iv) the parent institution that would benefit from the waiver complies with the group risk management policy and the risk appetite framework (the limit system in particular);

(v) the SREP for the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision does not show deficiencies in the area of internal governance and risk management.

(4) In assessing an application for a prudential waiver in accordance with Article 7(3) of the CRR, the ECB will also take into account considerations related to the leverage ratio, given that pursuant to Article 6(5) of the CRR granting such a waiver will also automatically waive the leverage requirement at the same level of the group structure.

- **Documentation related to Article 7(1) and (3) CRR waivers**

- **Documentation related to Article 7(1) waivers**

For the purpose of the assessment(s) under Article 7(1) of the CRR, it is expected that the credit institution submits the following documents, which the ECB will consider to be evidence that the conditions set out in the legislation have been satisfied:

(i) a letter signed by the parent undertaking's chief executive officer (CEO), with approval from the management body, stating that the significant supervised group complies with all the conditions for granting the waiver(s) laid down in Article 7 of the CRR;

(ii) a legal opinion, issued either by an external independent third party or by an internal legal department, approved by the management body of the parent undertaking, demonstrating that there are no obstacles to the transfer of own funds or repayment of liabilities by the parent undertaking resulting from either applicable legislative or regulatory acts (including fiscal legislation) or legally binding agreements;

(iii) an internal assessment which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the institution in accordance with Directive 2014/59/EU of the European Parliament and of the Council (Bank Recovery and Resolution Directive – BRRD)18;

(iv) evidence that the parent undertaking has guaranteed all the obligations of the subsidiary, by means, for example, of a copy of a signed guarantee or an extract from a public register certifying the existence of such guarantee or a declaration to such effect, which is reflected in the parent undertaking's articles of association or has been approved by the general meeting and reported in the annex to its consolidated financial statements. As an alternative to a guarantee, credit institutions can provide evidence that the risks in the subsidiary are negligible;

(v) the list of the entities for which the waiver is requested;

(vi) a description of the functioning of the financing arrangements to be used in the event that an institution faces financial difficulties, including information about how those arrangements ensure funds that are (a) available at will, and (b) freely transferable;

(vii) a statement signed by the CEO and approved by the management body of the parent undertaking and the other institution(s) seeking the waiver, certifying that there are no practical impediments to the transfer of funds or the repayment of liabilities by the parent undertaking;

(viii) documentation approved by the management bodies of the parent undertaking and the other institution(s) seeking the waiver attesting that the risk evaluation, measurement and control procedures of the parent undertaking cover all the institutions included in the application;

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[18] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.06.2014, p. 190).

(ix) a brief overview of the risk evaluation, measurement and control procedures of the parent institution, or, in the case of a horizontal group of institutions, of the consolidating institution, as well as information about the contractual basis, if any, upon which the risk management for the group as a whole can be controlled by the relevant steering entity;

(x) the structure of the voting rights attached to shares in the capital of the subsidiary;

(xi) any agreement that grants the parent undertaking the right to appoint or remove a majority of the members of the management body of the subsidiary.

- **Documentation related to Article 7(3) waivers**

It is expected that institutions applying for a waiver under Article 7(3) of the CRR submit the following documents to the ECB:

(i) a letter signed by the parent undertaking's CEO, with approval from the management body, stating that the significant supervised group complies with all the conditions for granting the waiver(s) laid down in Article 7 of the CRR;

(ii) a legal opinion, issued either by an external independent third party or by an internal legal department, approved by the management body of the parent undertaking, demonstrating that there are no obstacles to the transfer of funds or repayment of liabilities to the parent undertaking resulting from either applicable legislative or regulatory acts (including fiscal legislation) or legally binding agreements;[19]

(iii) an internal assessment which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the institution in accordance with the BRRD;

(iv) a description of the functioning of the financing arrangements to be used in the event that the parent undertaking faces financial difficulties, including information about how those arrangements ensure funds that are (a) available at will and (b) freely transferable;

(v) a statement signed by the relevant subsidiary undertakings' CEOs and approved by the management bodies of such subsidiary undertakings, certifying that there are no practical impediments to the transfer of funds or the repayment of liabilities to the parent undertaking;

(vi) documentation approved by the management body of the entity responsible for the risk evaluation, measurement and control procedures

[19] The ECB may on a case-by-case basis be satisfied with a legal opinion that does not encompass certain undertakings provided that the granting of the waiver is not and will not be justified on the basis of resources coming from those undertakings.

relevant for consolidated supervision attesting that the risk evaluation, measurement and control procedures cover the parent undertaking;

(vii) a brief overview of the risk evaluation, measurement and control procedures relevant for consolidated supervision.

In the case of subsidiaries established in non-EEA countries, institutions must submit, in addition to those documents, written confirmation by the third-country competent authority for the prudential supervision of such subsidiaries that there are no practical impediments to the transfer of own funds or repayment of liabilities from the relevant subsidiary to the parent institution seeking the waiver.

5. LIQUIDITY WAIVERS (Article 8 of the CRR)

Article 8 of the CRR allows the competent authority to waive, in full or in part, the application of the liquidity requirements set out in Part Six of the CRR to an institution and to all or some of its subsidiaries in the EU and supervise them as a single liquidity sub-group as long as certain conditions are met. The requirements that can be waived under Article 8 of the CRR are the following:

(i) the application of the liquidity coverage requirement under Article 412(1) of the CRR and further specified in Commission Delegated Regulation (EU) 2015/61;

(ii) the application of the stable funding requirement under Article 413(1) of the CRR and further specified under Part Six, Title IV of the CRR;

(iii) the application of Article 86 of the CRD;

(iv) the application of the associated liquidity reporting requirements under Article 430(1), point (d), of the CRR, including the reporting requirements related to the additional liquidity monitoring metrics referred to in Article 415(3) of the CRR.

When applying for a waiver in accordance with Article 8 of the CRR, credit institutions should consider the following:

(i) The ECB intends to exclude liquidity reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of cases where all the credit institutions that form a liquidity sub-group are located in the same Member State.

(ii) Credit institutions that already benefit from a waiver of the stable funding requirement under Article 413(1) of the CRR, for example because their existing waiver decision waives the application of the whole of Part Six of the CRR, are, in principle, already waived from the application of the NSFR as specified under Part Six, Title IV of the CRR. The ECB may review existing waiver decisions at any time to determine whether credit institutions continue to fulfil the relevant conditions for the granting of the waiver.

(iii) When considering whether to waive the application of Article 86 of the CRD to an institution, the ECB will take into account whether the institution meets all the conditions set out in Article 8 of the CRR and further specified below, and whether the application for such a waiver is made in conjunction with a waiver of the application of both the LCR and the NSFR.

- **General conditions – all waiver applications**

For each application in accordance with Article 8 of the CRR, it is expected that the credit institution provides the following.

(1) Details of the entities that will be included in the sub-group, the name of the entity within which the liquidity management function for the sub-group will be allocated and an explanation of the rationale for the application of the waiver.

(2) With respect to the requirement laid down in Article 8(1), point (a), of the CRR that the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six of the CRR, the credit institution should provide the following:

(i) A calculation of the liquidity requirement(s) for which the waiver is requested (i.e. the LCR and/or the NSFR) at the level of the liquidity sub-group, which demonstrates that the sub-group meets the relevant requirement(s) applicable in the jurisdiction where the sub-group is established.

(ii) Internal monitoring reports which confirm a sound liquidity and/or funding position. A liquidity and/or funding position would be considered to be sound if the consolidating credit institution has had an adequate level of liquidity and/or funding management and control over the past two years. It is expected that the credit institution flags any obstacles to the free transfer of funds that may arise, either in normal or stressed market conditions, from national liquidity provisions.

(iii) The LCR and/or NSFR of each entity of the sub-group and the existing plans to achieve or maintain compliance with the relevant requirement(s) should the waiver not be granted.

(3) With respect to the condition set out in Article 8(1), point (b), of the CRR that the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity and/or funding positions of all credit institutions within the sub-group that are subject to the waiver and ensures a sufficient level of liquidity and/or funding for all of these credit institutions, the credit institution should provide:

(i) the organisation chart of the liquidity management function within the sub-group showing the level of centralisation at the sub-group level;

(ii) a description of the processes, procedures and tools used for the internal monitoring of the entities' liquidity positions at all times and the extent to which they are designed at the sub-group level;

(iii) a description of the liquidity contingency plan for the liquidity sub-group.

(4) With respect to the condition laid down in Article 8(1), point (c), of the CRR that the credit institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they come due, the credit institution should provide:

(i) the contracts concluded between entities which are part of the liquidity sub-group, which do not provide for any amount or any time limit or which provide for a time limit as specified below under the sub-paragraphs "Further specifications – waiver of the LCR requirement" and "Further specifications – waiver of the NSFR requirement", as applicable;

(ii) evidence that the free movement of funds and the ability to meet individual and joint obligations as they come due are not subject to any conditions that may prevent or limit their exercise, confirmed by a legal opinion to that effect issued either by an external independent third party or by an internal legal department, approved by the management body;

(iii) evidence that, unless the waiver is revoked by the ECB[20], the legal contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to a notice period as specified below under the sub-paragraphs "Further specifications – waiver of the LCR requirement" and "Further specifications – waiver of the NSFR requirement", as applicable.

(5) With regard to the condition laid down in Article 8(1), point (d), of the CRR that there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in Article 8(1), point (c), of the CRR, the credit institution should provide:

(i) a legal opinion, issued either by an external independent third party or by an internal legal department, approved by the management body, that supports the absence of legal impediments, e.g. with regard to national insolvency laws;

(ii) an internal assessment which concludes that there are no current or foreseen material practical or legal impediments to the fulfilment of the contract referred to above and which confirms that the consequences of a waiver being granted have duly been taken into account in the resolvability self-assessment provided by the credit institution to the resolution authority

[20] The contract should include a clause providing that if the competent authority revokes the waiver the contract may be cancelled unilaterally with immediate effect.

in relation to the recovery plan, as well as the group financial support agreement, if available, drawn up in accordance with the BRRD;

(iii) an internal assessment which concludes that the waiver has no disproportionate negative effects on the resolution plan.

In relation to this provision, the ECB will additionally seek confirmation from the relevant national competent authority that the national liquidity and/or funding provisions, where applicable, do not contain material practical or legal impediments to the fulfilment of the contract.

- **Further specifications – waiver of the LCR requirement**

In the case of a waiver of the LCR requirement, with regard to the specifications of the contracts referred to under Article 8(1), point (c), of the CRR, it is expected that:

(1) the contracts do not provide for any time limit or provide for a time limit that exceeds the validity of the waiver decision by at least six months;

(2) there is evidence that, unless the waiver is revoked by the ECB, the contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to a six-month notice period, with prior mandatory notice to the ECB.

- **Further specifications – waiver of the NSFR requirement**

In the case of a waiver of the NSFR requirement, with regard to the specifications of the contracts referred to under Article 8(1), point (c), of the CRR, it is expected that:

(1) the contracts do not provide for any time limit or provide for a time limit that exceeds the validity of the waiver decision by at least 18 months;

(2) there is evidence that, unless the waiver is revoked by the ECB, the contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to an 18-month notice period, with prior mandatory notice to the ECB.

- **Waivers of the LCR and NSFR requirements at the cross-border level**

In the case of an application for a waiver of the LCR requirement under Article 8 of the CRR with regard to credit institutions which are established in several Member States, the ECB will, in addition to the specifications mentioned for granting a waiver at the national level, assess whether the following specifications have been met.

(1) To assess, in accordance with Article 8(3), point (a), of the CRR, the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of the CRD across the single liquidity sub-group, the ECB will verify that the liquidity SREP does not reveal breaches at the time of application and over the previous three months and the liquidity management of the credit institution as evaluated in the SREP is deemed to be of a high quality.

(2) In the case of an application for a waiver of the LCR requirement, with respect to Article 8(3), point (b), of the CRR and the distribution of amounts, and the location and ownership of the required liquid assets to be held within the single liquidity sub-group, account will be taken of whether significant sub-entities[21] or significant groups of sub-entities in one Member State maintain in that Member State an adequate amount of high-quality liquid assets (HQLA). An amount of 75% of the level of HQLA that would be required in order to comply with the LCR requirement at the solo or sub-consolidated level, in accordance with Commission Delegated Regulation (EU) 2015/61 and the CRR, would be deemed, in principle, adequate for these purposes.[22]

(3) In the case of an application for a waiver of the NSFR requirement, with respect to Article 8(3), point (b), of the CRR and the distribution of amounts and location of available stable funding within the single liquidity sub-group, account will be taken of whether significant sub-entities[23] or significant groups of sub-entities in one Member State maintain in that Member State an adequate amount of available stable funding. An amount of 75% of the level of available stable funding that would be required in order to comply with the NSFR requirement at the solo or sub-consolidated level, in accordance Article 413(1) of the CRR, as further specified under Part Six, Title IV of the CRR, would be deemed, in principle, adequate for these purposes.[24]

(4) With respect to the assessment, under Article 8(3), point (d), of the CRR, of the need for stricter parameters than those set out in Part Six of the CRR, in the case of a waiver for a credit institution located in a participating Member State and a non-participating Member State, and in the absence of national provisions which set stricter parameters, the LCR requirement, and respectively the NSFR requirement, is the highest applicable level among the countries where the subsidiaries and the top consolidating entity are located, if allowed by national law.

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21 This requirement applies to subsidiaries that meet at least one of the numerical thresholds specified in Articles 50, 56, 61 or 65 of the SSM Framework Regulation on a solo basis. If more than one subsidiary is established in a Member State but none of them meet these numerical thresholds at solo level, this condition should also apply if all entities established in that Member State, on the basis of either the consolidated position of the parent company in that Member State or the aggregated position of all subsidiaries that are subsidiaries of the same EU parent company and are established in said Member State, meet at least one of the numerical thresholds specified in Articles 50, 56, and 61 of the SSM Framework Regulation.

22 The computation of the amount of HQLA at the solo or sub-consolidated level should not take into account any preferential treatment, in particular that available under Article 425(4) and (5) of the CRR and Article 34(1), (2) and (3) of Commission Delegated Regulation (EU) 2015/61 in relation to the LCR.

23 This requirement applies to subsidiaries that meet at least one of the numerical thresholds specified in Articles 50, 56, 61 or 65 of the SSM Framework Regulation on a solo basis. If more than one subsidiary is established in a Member State but none of them meet these numerical thresholds at solo level, this condition should also apply if all entities established in that Member State, on the basis of either the consolidated position of the parent company in that Member State or the aggregated position of all subsidiaries that are subsidiaries of the same EU parent company and are established in said Member State, meet at least one of the numerical thresholds specified in Articles 50, 56, and 61 of the SSM Framework Regulation.

24 The computation of the amount of available stable funding at the solo or sub-consolidated level should not take into account any preferential treatment, in particular that available under Article 428h of the CRR.

(5) To assess whether there is a full understanding of the implications of such a waiver under Article 8(3), point (f), of the CRR, the ECB will take into account:

(i) the existing back-up plans to meet legal requirements should the waivers not be granted/cease to be granted;

(ii) a full assessment of the implications by the management body, and by the competent authorities as required, which will be performed and submitted to the ECB.

- **Documentation for Article 8 of the CRR**

For the purpose of the assessment under Article 8 of the CRR, it is expected that the credit institution submits the following documents, which the ECB considers to be evidence that the criteria set out in the legislation have been met:

(i) a cover letter signed by the credit institution's CEO, with approval from the management body, stating that the credit institution complies with all of the waiver criteria as set out in Article 8 of the CRR;

(ii) a description of the extent of the liquidity sub-group(s) to be constituted together with a list of all the entities that would be covered by the waiver;

(iii) a precise description of the requirements in respect of which the credit institution is asking for a waiver.

6. INDIVIDUAL CONSOLIDATION METHOD (Article 9 of the CRR)

The ECB intends to use the individual consolidation method provided for in Article 9(1) of the CRR for subsidiaries of credit institutions in the same Member State whose material exposures, or material liabilities, are to the same parent institution. The ECB will conduct the relevant assessment on a case-by-case basis based, among other aspects, on whether the sub-consolidated own funds are sufficient to ensure compliance by the institution on the basis of its stand-alone individual situation. For the purposes of this assessment, the criteria for granting the waiver set out in Article 7 of the CRR, as seen above, will also be taken into account, as appropriate and as provided for in Article 9(1) of the CRR.

7. WAIVERS FOR CREDIT INSTITUTIONS PERMANENTLY AFFILIATED TO A CENTRAL BODY (Article 10 of the CRR)

The ECB will grant a waiver both to institutions affiliated to a central body and to the central body itself, provided that the conditions of Article 10 of the CRR are met.

For the purpose of assessing whether to grant a waiver to the affiliates in accordance with Article 10(1) of the CRR, the ECB will take into account whether the following criteria, specifying the conditions of the legislative framework, have been met.

(1) To assess compliance with the requirement laid down in Article 10(1), point (a), that the commitments of the central body and affiliated institutions are joint and

several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body, account will be taken of whether:

(i) funds can be transferred or liabilities can be repaid from one network member to another swiftly and the method for the transfer or repayment is sufficiently simple;

(ii) there are indications from the past regarding the flow of funds between network members which demonstrate an ability to make prompt transfers of funds or repayments of liabilities;

(iii) the by-laws of the network members or any shareholders' agreements, or any other known agreements, do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities;

(iv) the joint risk-absorbing capacity of the central body and affiliated institutions is sufficient to cover expected and unexpected losses of the members.

(2) To assess compliance with the requirement laid down in Article 10(1), point (b), that the solvency and the liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of their consolidated accounts, the ECB will verify that:

(i) the COREP "Group Solvency" template, which aims to provide a global view on how the risks and the own funds are distributed within the group, shows no discrepancy in this regard;

(ii) the central body and the affiliated institutions are compliant with the requirements set out in the CRR, including reporting, on a consolidated basis.

(3) To assess compliance with the requirement laid down in Article 10(1), point (c), that the management of the central body is empowered to issue instructions to the management of the affiliated institutions, the ECB will take into account whether:

(i) these instructions ensure that the affiliated institutions comply with the requirements of the legislation and of the by-laws with a view to safeguarding the soundness of the group;

(ii) the instructions that the central body can issue cover at least the objectives listed in the CEBS Guidelines[25] issued on 18 November 2010.

For the purpose of the ECB's assessment with regard to granting a waiver to the central body in accordance with Article 10(2) of the CRR, it is expected that the credit institution submits the documents mentioned above to demonstrate that the conditions of Article 10(1) of the CRR have been met.

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[25] "CEBS's guidelines regarding revised Article 3 of Directive 2006/48/EC", Committee of European Banking Supervisors, November 2010.

In addition to these, and for the purpose of assessing the second condition referred to in Article 10(2), it is expected that the institution submits evidence that the liabilities or commitments of the central body are entirely guaranteed by the affiliated institutions. A copy of a signed guarantee or reference to a public register certifying such a guarantee or a declaration to that effect, which is reflected in the affiliated institution's by-laws or approved by the general meeting and mentioned in the annex to the financial statements, are examples of such evidence.

8. SUPERVISION ON A SUB-CONSOLIDATED BASIS (Article 11(6) of the CRR)

The ECB is of the view that it is sensible to require institutions to comply with the obligations laid down in Parts Two to Eight of the CRR and in Title VII of Directive 2013/36/EU at the sub-consolidated level in accordance with Article 11(6) of the CRR in cases where:

(i) it is justified for supervisory purposes by the specific nature of the risks or the capital structure of a credit institution;

(ii) Member States have adopted national laws requiring the structural separation of activities within a banking group.

The assessment will be carried out on a case-by-case basis.

9. METHODS OF CONSOLIDATION IN THE CASE OF RELATED UNDERTAKINGS WITHIN THE MEANING OF ARTICLE 22(7) OF DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL[26] (Article 18(3) of the CRR in conjunction with Article 2 of Commission Delegated Regulation (EU) 2022/676)[27]

The ECB will rely on the criteria for designation of a group entity responsible for ensuring compliance with the requirements referred to in Part One, Title II, Chapter 2, Section 1 of the CRR on the basis of the consolidation situation of all undertakings of the group, as set out in Article 2(1) of Commission Delegated Regulation (EU) 2022/676. The ECB expects to exercise the discretion set out in Article 2(3) of that Regulation to waive the criteria set out in Article 2(1) of that Regulation on an exceptional basis only. The ECB expects that supervised entities use the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU.

10. CONSOLIDATION IN THE CASE OF PARTICIPATIONS OR CAPITAL TIES OTHER THAN THOSE REFERRED TO IN ARTICLE 18(1) AND (4) OF THE CRR (Article 18(5) of the CRR in conjunction with Article 4 of Commission Delegated Regulation (EU) 2022/676)

The ECB expects that institutions value their participations or capital ties other than those referred to in Article 18(1) and (4) of the CRR in line with the applicable

[26] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

[27] Commission Delegated Regulation (EU) 2022/676 of 3 December 2021 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions in accordance with which consolidation is to be carried out in the cases referred to in Article 18(3) to (6) and Article 18(8) of that Regulation (OJ L 123, 26.4.2022, p. 1).

accounting framework. The ECB may impose a method of consolidation different from the valuation method used for accounting purposes if it deems, following a case-by-case assessment, that the conditions set out in Article 4 of Commission Delegated Regulation (EU) 2022/676 are met.

11. CONSOLIDATION IN CASES OF SIGNIFICANT INFLUENCE AND SINGLE MANAGEMENT (Article 18(6) of the CRR in conjunction with Articles 5 and 6 of Commission Delegated Regulation (EU) 2022/676)

    The ECB may impose full consolidation in cases of significant influence or the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU in cases of single management if, following a case-by-case assessment, the conditions set out in, respectively, Article 5 or 6 of Commission Delegated Regulation (EU) 2022/676 are deemed to be met.

12. METHODS FOR CONSOLIDATION IN THE CASE OF UNDERTAKINGS OTHER THAN INSTITUTIONS AND FINANCIAL INSTITUTIONS (Article 18(7) of the CRR)

    The ECB intends to allow institutions to apply a method different from the equity method only upon application by the institution and provided that the institution demonstrates compliance with the conditions set out in Article 18(7) of the CRR.

    To comply with the above-mentioned conditions, the institution should submit an application with the following information: (i) a comprehensive rationale for using a different method; (ii) a qualitative and quantitative assessment of the alleged inadequate reflection of risks or undue burden if the equity method is applied; and (iii) evidence that the alternative approach leads to a treatment that is as prudent as that resulting from the application of the equity method.

    The ECB expects to include in the decision granting the permission a review clause to verify that, in the event that the prudential treatment of the holdings in the undertakings referred to in the first sub-paragraph of Article 18(7) changes, the application of a method other than the equity method continues to be as prudent.

13. CONSOLIDATION IN THE CASE OF STEP-IN RISK (Article 18(8) of the CRR in conjunction with Article 7 of Commission Delegated Regulation (EU) 2022/676)

    The ECB may impose proportional or full consolidation of an undertaking which is not an institution or financial institution if, following a case-by-case assessment of the risk of step-in pursuant to Article 7(1) in connection with Article 4(2) and (3) of Commission Delegated Regulation (EU) 2022/676, the conditions set out in Article 7(2) or (3) of that Regulation are deemed to be met. In line with recital 5 of Commission Delegated Regulation (EU) 2022/676, the ECB will scrutinise, as a minimum, certain categories of undertakings, such as special purpose entities with the exception of securitisation special purpose entities as defined in Article 2(2) of Regulation (EU) 2017/2402 of the European Parliament and of the Council[28], for

[28] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

which the conditions for the transfer of significant credit risk set out in Article 244 of the CRR are applicable, as well as those undertakings that, despite being excluded from the definition of an ancillary services undertaking under Article 4(1), point (18), of the CRR, pose similar risks to the institution.

14. EXCLUSION FROM CONSOLIDATION (Article 19(2) of the CRR)

For the purposes of the application of Article 19(2), point (b), of the CRR, the ECB is of the view that permission for exclusion from the scope of prudential consolidation should only be granted in exceptional circumstances and subject to the conditions set out in the CRR. In this respect, institutions or financial institutions which are a subsidiary or an undertaking in which a participation is held may be considered of negligible interest with respect to the objectives of monitoring institutions only when institutions are able to provide strong evidence of such negligible interest on the basis of a comprehensive assessment of all relevant risks stemming from these entities and the ECB decides on a case-by-case basis that their exclusion from the scope of prudential consolidation does not and is not expected to affect the monitoring of institutions on a consolidated basis. In the exceptional case that the ECB permits the exclusion of a subsidiary or of an entity in which a participation is held from the scope of consolidation, the ECB expects the participation in that subsidiary or entity to be treated as a significant investment in a financial sector entity, provided that the definition set out in Article 43 of the CRR is met. The ECB further expects that the valuation of the subsidiary or entity is carried out in accordance with the equity method or, in cases where the equity method would be unduly burdensome, in accordance with the valuation method applicable under the relevant accounting framework.

15. VALUATION OF ASSETS AND OFF-BALANCE-SHEET ITEMS – USE OF INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS) FOR PRUDENTIAL PURPOSES (Article 24(2) of the CRR)

The ECB has decided not to exercise in a general manner the option set out in Article 24(2) of the CRR, which allows competent authorities to require credit institutions to effect, for prudential purposes, the valuation of assets and off-balance-sheet items and the determination of own funds in accordance with International Accounting Standards, including in cases where the national applicable accounting framework requires the use of n-GAAP (see also Article 24(1) of the CRR). Banks can therefore continue reporting to the supervisor according to their national accounting standards.

However, the ECB may consider exercising the option set out in Article 24(2) on a case-by-case basis, if duly justified from a supervisory perspective.

Furthermore, the ECB will assess applications to use International Accounting Standards for prudential reporting (including in cases of applicability of n-GAAP under the national accounting framework) pursuant to Article 24(2) of the CRR.

To that end, the ECB would expect the following.

(1) The application should be submitted by the legal representatives of all the legal entities within any banking group that will actually apply the International Accounting Standards for prudential reporting as a consequence of the request being granted.

(2) For prudential purposes the same accounting framework will apply to all reporting entities within a banking group, in order to ensure consistency between subsidiaries established in the same Member State or in different Member States. For the purposes of this exercise, a banking group is a group composed of all the significant supervised entities included in the group defined in the significance decision applicable to the requesting entities.

(3) A statement should be submitted by the external auditor, certifying that the IFRS data reported by the institution as a consequence of the application being granted are in line with the applicable IFRS endorsed by the European Commission. This statement must be submitted to the ECB along with the reporting data which the auditor certifies at least once a year.

The use of IFRS for prudential reporting requirements will apply permanently to all relevant prudential reporting requirements after the credit institution has been notified of the ECB decision granting the application.

The ECB may consider the application of a transitional period, as appropriate and on a case-by-case basis, for the full implementation of the above-mentioned conditions.

16. DISCRETION TO EXCLUDE AN EXEMPTED FINANCIAL HOLDING COMPANY OR MIXED FINANCIAL HOLDING COMPANY FROM PRUDENTIAL CONSOLIDATION (Article 21a(4a), of the CRD)

In accordance with recital 8 of CRDVI, the exclusion of exempted financial holding companies or mixed financial holding companies from the prudential consolidation perimeter should happen only in exceptional circumstances. The ECB will assess whether such circumstances exist on a case-by-case basis.

When assessing whether (i) the exclusion may affect the effectiveness of the supervision of the subsidiary credit institution or of the group and (ii) the financial holding company or mixed financial holding company makes recourse to substantial leverage, the ECB will consider all the following factors:

(1) whether the equity, deeply subordinated and subordinated debt of the financial holding company or mixed financial holding company are composed solely of capital instruments and items that if issued by a credit institution would have qualified as Common Equity Tier 1 capital instruments or items, Additional Tier 1 capital instruments or items, or Tier 2 capital instruments or items respectively;

(2) whether or not the composition of assets, liabilities and off-balance sheet items of the financial holding company or mixed financial holding company is such that the Common Equity Tier 1, Tier 1, total capital and leverage ratios of the subsidiary credit institution on an individual and/or on a consolidated basis, as applicable, as well as the Common Equity Tier 1, Tier 1, total capital and

leverage ratios calculated on the basis of the consolidated situation of a subsidiary financial holding company or mixed financial holding company (as referred to in Article 21a(4) point (c) of the CRD), are higher than the Common Equity Tier 1, Tier 1, total capital and leverage ratios calculated on the basis of the consolidated situation of the exempted financial holding company or mixed financial holding company seeking to be excluded from the prudential consolidation perimeter;

(3) whether the financial holding company or mixed financial holding company commits to maintain over time a composition of its equity, assets, liabilities and off-balance sheet items consistent with points (1) and (2);

(4) whether the subsidiary credit institution or the subsidiary financial holding company or mixed financial holding company (referred to in Article 21a(4) point (c) of the CRD), as applicable, that is responsible for compliance with prudential requirements on a consolidated basis provides adequate evidence that legal or reputational risks (e.g. relating to anti-money laundering requirements or tax law) resulting from the adoption of a group structure with a financial holding company or mixed financial holding company excluded from the perimeter of prudential consolidation are adequately managed.

The ECB expects that the subsidiary credit institution or the subsidiary financial holding company or mixed financial holding company (referred to in Article 21a(4), point (c), of the CRD), as applicable, that is responsible for compliance with prudential requirements on a consolidated basis guarantees that the specifications listed in points (1) to (4) will be adhered to on an ongoing basis and promptly informs the ECB in the case of any changes that could affect such adherence.

Chapter 2
Own funds

1. This chapter sets out the ECB's policy regarding the definition and calculation of own funds.

2. Part Two of the CRR, as well as Commission Delegated Regulation (EU) No 241/2014[29], set out the relevant legislative and regulatory framework.

3. CLASSIFICATION OF SUBSEQUENT ISSUANCES AS COMMON EQUITY TIER 1 INSTRUMENTS (Article 26(3) of the CRR)

   The ECB considers that the provisions governing the prior and subsequent issuances are "substantially the same" if there have been no changes to the provisions governing the prior issuances[30],[31] which would affect in substance the clauses that are relevant for the Common Equity Tier 1 eligibility assessment and granting of the permission.

   It is expected that credit institutions that would like to make use of the notification procedure submit the following documents to the ECB at least 20 calendar days in advance of the date of envisaged classification of the instrument as Common Equity Tier 1:

   (1) a declaration that (i) no changes of substance have been made to the provisions governing the issuance relevant for the assessment of compliance with Article 28 or 29 of the CRR and Commission Delegated Regulation (EU) No 241/2014; (ii) the instrument is not funded directly or indirectly by the institution; and (iii) there are no other arrangements that would alter the economic substance of the instrument, pursuant to Article 79a of the CRR;

   (2) evidence that the instrument is fully paid up;

   (3) a description of the changes made to the provisions governing the previous issuance and a self-assessment of why those changes are not relevant for the assessment of compliance with Articles 28 or 29 of the CRR and the relevant delegated regulation;

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[29] Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

[30] For capital instruments subject to profit and loss transfer agreements, changes to such agreements also have to be duly considered.

[31] The ECB considers it unlikely that it would regard capital instruments issued against contributions in kind as a subsequent issuance with provisions that are substantially the same as the provisions governing previous issuances for which the institution has already received permission. This is because contributions in kind, unlike cash contributions, differ from issuance to issuance. It thus seems very unlikely that it would be possible to rely on the assessment made for the previous issuance for which permission was granted. An exception to this is contributions in kind that result from conversions of other own funds instruments or eligible liabilities of the institution into Common Equity Tier 1 instruments of the institution.

(4) a tracked changes version of the provisions governing the issuance which indicates with marks how the provisions governing the current issuance differ from those governing the previous issuance.

The ECB is deemed to have been notified when it communicates to the credit institution that it has received the complete notification.[32] If there are no objections raised by the ECB regarding the condition that the provisions governing the subsequent issuance are substantially the same as those governing the prior issuance within 20 calendar days of receiving the notification, the institution can classify the instrument as a Common Equity Tier 1 instrument. If objections are raised, the standard prior permission process set out in the first sub-paragraph of Article 26(3) of the CRR applies.

4. DEFINITION OF MUTUALS (Article 27(1), point (a), of the CRR)

The ECB considers that an institution qualifies as a mutual within the meaning of Article 27(1), point (a)(i), of the CRR provided that it is defined as such under national law and according to the specific criteria of Commission Delegated Regulation (EU) No 241/2014.

5. DEDUCTION OF INSURANCE HOLDINGS (Article 49(1) of the CRR)

With regard to the non-deduction of holdings within the context of Article 49(1) of the CRR, significant credit institutions can expect the following treatment:

(i) in cases where the credit institution plans to submit a request to the ECB for such permission, the ECB will grant a permission, covering all own funds-equivalent instruments, provided that the CRR criteria and appropriate disclosure requirements are met.

(ii) in cases where permission for non-deduction has already been granted by the national competent authority prior to 4 November 2014, the credit institutions may continue to not deduct the relevant holdings on the basis of that permission, provided that appropriate disclosure requirements are met and that the permission covers all own funds equivalent instruments, otherwise the ECB will amend those permissions to apply the risk weight to all own funds equivalent instruments;

6. DEDUCTION OF HOLDINGS OF FINANCIAL SECTOR ENTITIES (Article 49(2) of the CRR)

The ECB considers the deduction of holdings of own funds instruments issued by financial sector entities included in the scope of consolidated supervision in accordance with Article 49(2) of the CRR to be necessary in specific cases and, in particular, in cases of structural separation and resolution planning. In accordance with Article 49(2), third and fourth sub-paragraphs, this provision does not apply

[32] Where the instrument has not yet been issued, a notification is considered complete for these purposes even if the ECB has not yet received the declaration that the instrument is not funded directly or indirectly by the institution or the evidence that the instrument is fully paid up. This notwithstanding, the declaration that the instrument is not funded directly or indirectly by the institution and the evidence that the instrument is fully paid up must be submitted within five working days of the date of issuance.

when (i) calculating own funds for the purposes of the requirements laid down in Articles 92a and 92b, which are instead calculated in accordance with the deduction framework set out in Article 72e(4) of the CRR, or (ii) with regard to the deductions set out in Article 72e(5) of the CRR.

7. CALCULATION OF THE TRIGGER OF ADDITIONAL TIER 1 INSTRUMENTS ISSUED BY SUBSIDIARY UNDERTAKINGS ESTABLISHED IN A THIRD COUNTRY (Article 54(1), point (e), of the CRR)

The ECB intends to consider the national law of the third country or the contractual provisions governing the instruments as equivalent to the requirements set out in Article 54 of the CRR if:

(i) the institution provides the ECB with a signed legal opinion from an independent and recognised law firm certifying that the national law of that third country and the contractual provisions are at least equivalent to the requirements of Article 54 of the CRR;

(ii) the consultation with the EBA confirms the assessment of equivalence.

8. REDUCTION OF OWN FUNDS: EXCESS CAPITAL MARGIN REQUIREMENT (Article 78(1), point (b), of the CRR)

The ECB intends to determine the excess margin required in Article 78(1), point (b), of the CRR for the purpose of a reduction of own funds, provided that the conditions of Article 78(1) are met and after assessing all of the following factors:

(i) whether the credit institution, if taking any of the actions referred to in Article 77(1) of the CRR, would continue to exceed, over a three-year horizon, the overall capital requirements set out in the most recent applicable SREP decision by at least the guidance on additional own funds set out in the same SREP decision;[33]

(ii) whether the credit institution, if taking any of the actions referred to in Article 77(1) of the CRR, would continue to exceed, over a three-year horizon, the requirements laid down in the BRRD and in Articles 92a or 92b of the CRR, as applicable, by at least the margin considered necessary by the Single Resolution Board, in agreement with the ECB, to fulfil the condition set out in Article 78a of the CRR;

(iii) the impact of the planned reduction on the relevant tiers of own funds;

(iv) whether the credit institution, if taking any of the actions referred to in Article 77(1) of the CRR, would continue to exceed, over a three-year horizon, the leverage ratio requirement laid down in Article 92(1), point (d), of the CRR, the additional own funds requirement to address the risk of

[33] The reference to capital levels in excess of the overall capital requirements includes (i) the Common Equity Tier 1 ratio being in excess of the Common Equity Tier 1 requirement plus the combined buffer requirement (CBR) by at least the Pillar 2 guidance (P2G), (ii) the Tier 1 ratio being in excess of the Tier 1 requirement plus the CBR by at least the P2G, and (iii) the total capital ratio being in excess of the total capital requirement plus the CBR by at least the P2G.

excessive leverage set out in the most recent applicable SREP decision and the leverage ratio buffer laid down in Article 92(1a) of the CRR by at least the guidance on additional own funds to address the risk of excessive leverage set out in the most recent applicable SREP decision;

(v) the quality of the forward-looking information to be provided pursuant to Article 30(1), points (e), (f) and (i), of Commission Delegated Regulation (EU) No 241/2014 and the completeness and accuracy of the evaluation to be provided pursuant to Article 30(1), point (h), of that Delegated Regulation, including the severity of the stress tests referred to therein, whereby the quality assessment of stressed forward-looking information focuses on, first, whether the scenario design captures both sufficiently severe macroeconomic assumptions and institutions' material risks and, second, the transparency with which this scenario has been translated into credible capital and financial projections.

Applications to reduce own funds received from institutions that do not adhere to the margins set out above may still be approved on a case-by-case basis where this is duly justified by well-founded prudential arguments. Where the margin under point (ii) is not adhered to, the ECB will seek the opinion of the Single Resolution Board on whether the own funds reduction may jeopardise the fulfilment of the requirements for own funds and eligible liabilities laid down in Articles 92a or 92b of the CRR and in the BRRD.

Where for the purposes of point (i) or (iv) the institution is not subject to guidance on additional own funds, the margin will be determined on a case-by-case basis having regard to the specific circumstances of the institution.

9. REDUCTION OF OWN FUNDS: GENERAL PRIOR PERMISSION (Article 78(1), second sub- paragraph, of the CRR)

The ECB intends to grant the general prior permission laid down in the second sub-paragraph of Article 78(1) of the CRR where the conditions set out therein and in Commission Delegated Regulation (EU) No 241/2014 are met. The ECB intends to determine the margin specified in the second sub-paragraph of Article 78(1) of the CRR after assessing all of the factors set out in paragraph 8 above.[34]

10. REDUCTION OF OWN FUNDS: MUTUALS, SAVINGS INSTITUTIONS, COOPERATIVE SOCIETIES (Article 78(3) of the CRR)

With regard to instruments issued by mutuals, savings institutions, cooperative societies and similar institutions under Articles 27 and 29 of the CRR, the ECB intends to grant the waiver provided for in Article 78(3) of the CRR on a case-by-case basis, provided that the institutions concerned limit the redemption as provided

[34] For Common Equity Tier 1 instruments, Article 78(1), second sub-paragraph, of the CRR further specifies that the predetermined amount must not exceed 10% of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements laid down in the CRR, CRD and BRRD added to the margin that the competent authority considers necessary. If an institution uses part of its Common Equity Tier 1 capital in excess of its Common Equity Tier 1 requirements to meet any risk-based or non-risk based non-Common Equity Tier 1 requirements, the amount used increases the margin considered necessary by the ECB.

for in Articles 10 and 11 of Commission Delegated Regulation (EU) No 241/2014. In particular, it will take into account the following aspects:

(1) whether the institution has both the right to defer the redemption and the right to limit the amount to be redeemed;

(2) whether the institution has these rights for an unlimited period of time;

(3) whether the institution determines the extent of the limitations on the basis of its prudential situation at any time having regard to:

(i) its overall financial, liquidity and solvency situation;

(ii) the amount of Common Equity Tier 1 capital, Tier 1 capital, total capital and eligible liabilities relative to the total risk exposure amount and the total exposure measure, as applicable to the institution;

(iii) the overall capital requirements (including the combined buffer requirement), the leverage ratio requirement (including the leverage ratio buffer requirement), and the requirements laid down in the BRRD and in Articles 92a or 92b of the CRR, as applicable to the institution.

The ECB may further limit the redemption beyond the legislative or contractual limitations.

11. REDUCTION OF ADDITIONAL TIER 1 OR TIER 2 INSTRUMENTS AND/OR RELATED SHARE PREMIUM ACCOUNTS DURING THE FIVE YEARS FOLLOWING THEIR DATE OF ISSUANCE (Article 78(4) of the CRR)

Provided that the relevant conditions set out in Article 78(1) of the CRR are met, the ECB intends to:

(i) generally permit the reduction of Additional Tier 1 or Tier 2 instruments and/or related share premium accounts during the five years following their date of issuance under the conditions specified in Article 78(4), points (c) and (e), of the CRR;

(ii) permit the reduction of Additional Tier 1 or Tier 2 instruments and/or related share premium accounts during the five years following their date of issuance under the conditions specified in Article 78(4), points (a), (b) and (d) of the CRR only if justified following a case-by-case assessment.

12. TEMPORARY WAIVER OF THE DEDUCTION OF OWN FUNDS INSTRUMENTS OR ELIGIBLE LIABILITIES FROM OWN FUNDS AND ELIGIBLE LIABILITIES IN A FINANCIAL ASSISTANCE OPERATION (Article 79(1) of the CRR)

The ECB considers that the deduction of own funds instruments or eligible liabilities can be temporarily waived for the purpose of facilitating a financial assistance operation when the conditions specified in Article 79(1) of the CRR and the conditions specified in Article 33 of Commission Delegated Regulation (EU) No 241/2014 are met.

13. WAIVER FOR ADDITIONAL TIER 1 AND TIER 2 INSTRUMENTS ISSUED BY A SPECIAL PURPOSE ENTITY (Article 83(1) of the CRR)

The ECB intends to grant, until 31 December 2021, the waiver provided for in Article 83(1) of the CRR for the purpose of including Additional Tier 1 and Tier 2 instruments issued by a special purpose entity (SPE) in the qualifying Additional Tier 1 or Tier 2 capital of a credit institution in accordance with the conditions specified therein and the conditions specified in Article 34 of Commission Delegated Regulation (EU) No 241/2014. The ECB will grant this waiver when the other assets owned by the SPE are minimal and insignificant.

14. MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL (Article 84 of the CRR)

The ECB would consider it appropriate to apply Article 84(1) of the CRR to a parent financial holding company of a credit institution in order to ensure that only that part of the consolidated own funds that is promptly available to cover losses at the parent level is included in the regulatory capital.

15. MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL IN THE CASE OF THIRD-COUNTRY CONSOLIDATED REQUIREMENTS (Article 84(1), point (a)(ii), Article 85(1), point (a)(ii), and Article 87(1), point (a)(ii), of the CRR)

When a third-country subsidiary is subject to third-country requirements on the basis of its consolidated situation or on the basis of the consolidated situation of its third-country parent financial holding company or mixed financial holding company, the ECB expects that supervised entities calculate the amount of required consolidated Common Equity Tier 1 capital that relates to that third-country subsidiary set out in Article 84(1), point (a)(ii), of the CRR by using as the requirement the lower of (i) the sum of the requirement laid down in Article 92(1), point (a), of the CRR, plus the requirements referred to in Articles 458 and 459 of the CRR, plus the specific own funds requirements referred to in Article 104 of the CRD and the combined buffer requirement defined in Article 128, point (6), of the CRD applicable at consolidated level to the supervised group, and (ii) the sum of applicable local third-country consolidated requirements, insofar as those requirements are to be met by Common Equity Tier 1 capital.

The same applies, mutatis mutandis, to the calculations under Articles 85(1), point (a)(ii), and 87(1), point (a)(ii), of the CRR.

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, 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:

(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.

Chapter 3
Capital requirements

1. This chapter sets out the ECB's policy on capital requirements.

2. Part Three of the CRR, interpreted in accordance with the relevant EBA Guidelines, sets out the relevant legislative and regulatory framework.

3. TRADING BOOK CLASSIFICATION EXEMPTION (Article 104(4) of the CRR)

The ECB understands that any position in an instrument referred to in points (d) to (i) in Article 104(2) of the CRR should be designated as a trading book instrument when it is first recognised on the books of an institution, unless the institution has been granted an approval from the ECB to include such positions in the non-trading book upon the position being recognised on the books of the institution for the first time.

The ECB is of the view that, for instruments listed in Article 104(3) of the CRR, where there is a potential overlap with Article 104(2), points (d) to (i), of the CRR, Article 104(4) of the CRR does not apply and the relevant positions must be assigned to the non-trading book.

To allocate a position in an instrument referred to in Article 104(2), points (d) to (i), of the CRR to the non-trading book, the credit institutions should submit an application, which will be assessed on a case-by-case basis by the ECB. The ECB is of the view

that requests should list either single positions in instruments or a group of positions in instruments. The application package may refer to one or more of points (d) to (i) of Article 104(2) of the CRR.

The group of instruments is determined by the business context of their execution and their objectives in terms of achieving risk management goals, such that these objectives clearly follow the business strategy. The financial instruments and the business objectives mentioned in the application should be defined in the internal policies of the credit institution, and the ECB should be notified of any changes to the policies that affect the scope of the permission granted.[35] If the institution's application does not fulfil the documentation requirements specified below, the assessment process may be significantly delayed and the ECB assessment will not be finalised until all the relevant documentation is provided.

For the purposes of assessing the institution's request pursuant to Article 104(4) of the CRR, the ECB will consider the following:

(i) that the discretion under Article 104(2), point (e), of the CRR may not be used if the institution internally defines "market-making" only as buying and selling a particular security on a regular and continuous basis by posting or executing orders at a publicly quoted price;[36]

(ii) that the discretion under Article 104(2), point (h), of the CRR may not be granted in respect of securities financing transactions (SFTs) that are trading-related and have a trading intent as specified in Article 102(2) of the CRR;

(iii) how the institution ensures that the positions included in the request are neither held with trading intent nor used for hedging purposes in the trading book;

(iv) that the discretion provided for in Article 104(4) of the CRR may not be used owing to deficiencies in the operationalisation (e.g. technical, procedural or methodological issues constraining the assignment of positions to the trading book) of the requirements of Article 104 of the CRR for the classification of instruments – 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;

(v) whether the intent not to trade and not to hedge positions held with trading intent (Article 104(4) CRR) is clearly expressed in the policies and procedures of the institution pursuant to Article 104(1) of the CRR;

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35 See also the documentation requirements under Article 104(1) of the CRR.

36 Positions that are covered by the definition of market-making according to Article 4(7) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(vi) whether for the positions included in the request, an internal risk management framework is defined which is aligned with internal risk appetite definitions and which is approved by senior risk management;

(vii) 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 that are separate from units responsible for trading book management;

(viii) how the institution monitors that relevant positions under the discretion provided for in Article 104(4) of the CRR fulfil the business context of their execution and achieve the risk management goals, and which actions are envisaged for positions that no longer meet the conditions.

For the purpose of assessing the request of the institution under Article 104(4) of the CRR, the ECB expects that the credit institution presenting the application submits the documents listed in points (i) to (x) below, unless they have already been provided to the ECB. In the latter case, banks should clearly set out the circumstances under which those documents have been provided. The following documentation should be provided at a level of detail reflecting the specific positions in instruments or groups of instruments for which the discretion under Article 104(2), points (d) to (i), of the CRR is requested:

(i) a list of the instruments or groups of instruments for which the approval is requested;

(ii) relevant strategies and policies for trading, hedging and risk management:

(a) if the scope of application covers Article 104(2), point (d), of the CRR and the business objective is the hedging of banking book positions, the internal classification of derivative instruments as hedging instruments throughout their lifetime;

(b) if the hedged instrument expires or is sold, terminated or exercised and is not replaced or rolled into another hedged instrument, documentation confirming that the hedging derivative instrument has been discontinued;

(iii) documents which describe the relevant monitoring and reporting process;

(a) if the scope of application covers Article 104(2), point (d), of the CRR and the business objective is the hedging of banking book positions, the monitoring should include the hedge effectiveness and hedge relationship between hedged positions and derivative instruments, the identification of the hedging instrument, the hedged position or risk being hedged and how the credit institution will assess whether the hedging relationship meets the hedge effectiveness as specified in the internal policies of the credit institution;

(iv) impact assessments for the own funds requirements of the trading and non-trading books[37] (including an explanation of the assumptions underlying the impact calculation);

(v) the intended accounting treatment and estimate[38] of the accounting value of the position;

(vi) the expected position size that will be subject to the permission in terms of notional values for derivatives and expected impact on risk metrics derived on the basis of risk appetite and past experience;

(vii) the motivation for the inclusion of the position in the non-trading book and arguments for this treatment compared with other positions in the same/similar instruments held in the trading book (if any);

(viii) internal approval for the application of Article 104(4) of the CRR;

(ix) relevant audit reports in respect of the periodic internal audits required under Article 104(1) of the CRR;

(x) evidence that the position is not held with trading intent and does not hedge positions held with trading intent.

A new group of instruments (i.e. with new risk management objectives or resulting from a business activity outside the currently approved scope) can be included in the permission scope only after the ECB has approved such an extension. The ECB expects that credit institutions maintain, on an ongoing basis, an overview (including exposure values) of the instrument groups assigned to the non-trading book under the permission granted for the use of Article 104(4) of the CRR and provide it to the ECB on demand.

4. NON-TRADING BOOK CLASSIFICATION EXEMPTION (Article 104(5) of the CRR)

The ECB understands that any position in an instrument referred to in Article 104(3), point (i), of the CRR (instruments in hedge funds) should be designated as a non-trading book instrument when it is first recognised on the books of an institution unless the institution has been granted an approval from the ECB to include such positions in the trading book upon the position being recognised on the books of the institution for the first time.

To allocate a position in an instrument referred to in Article 104(3), point (i), of the CRR to the trading book, credit institutions should submit an application, which will be assessed on a case-by-case basis by the ECB. The ECB is of the view that separate requests should be submitted for each hedge fund.

The business objectives mentioned in the application should be defined in the internal policies of the credit institution, and any changes to the policies that affect

[37] The assessment should take into account the expected maximum size of the positions subject to the applied discretion.

[38] The assessment should take into account the expected maximum size of the positions subject to the applied discretion.

the scope of the permission should be notified to the ECB.[39] If the institution's application does not fulfil the documentation requirements specified below, the assessment process may be significantly delayed and the ECB assessment will not be finalised until all the relevant documentation is provided.

The ECB is of the view that, in order to apply the derogation provided for in Article 104(5) of the CRR to instruments in hedge funds, all of the following conditions should be satisfied:

(i) the credit institution understands the hedge fund's strategy and risks and governing terms, and the investment strategy of the hedge funds is in line with the credit institution's trading intent or its hedging strategy and this is clearly documented as part of the documentation sent to the ECB;

(ii) 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);

(iii) the hedge fund is listed;

(iv) the credit institution can demonstrate that the own funds requirements calculated under the trading book are appropriate and adequately capture the risk of the positions in the hedge funds.

For the purposes of assessing the request of the institution under Article 104(5) of the CRR, the ECB will consider the following aspects:

(i) how the institution ensures that the positions included in its request are held with trading intent or used for hedging purposes in the trading book;

(ii) how the institution ensures that it meets at least one of the conditions specified in Article 104(8) of the CRR for that position;

(iii) how the discretion under Article 104(5) of the CRR is covered in the clearly defined policies and procedures of the institution under Article 104(1) of the CRR;

(iv) whether, for the positions included in the request, an internal risk management framework is defined which is aligned with internal risk appetite definitions and approved by senior risk management;

(v) 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;

[39] See also the documentation requirements under Article 104(1) of the CRR.

(vi) how the institution monitors that relevant positions under the discretion provided for in Article 104(5) of the CRR fulfil the business context of their execution and achieve the risk management goals as well as processes in place for positions that no longer meet the conditions of the approval.

For the purpose of assessing the request of the institution pursuant to Article 104(5) of the CRR, it is expected that the credit institution presenting the application submits the documents in points (i) to (x) below, unless they have already been provided to the ECB pursuant to other regulations, decisions or requirements. In the latter case, banks should clearly set out the circumstances under which those documents have been provided. The following documentation should be provided at a level of detail reflecting the positions in hedge funds:

(i) a list of the hedge funds for which the approval is requested;

(ii) relevant strategies and policies for trading, hedging and risk management;

(iii) relevant monitoring and reporting process documentation;

(iv) impact assessments for the own funds requirements for the trading and non-trading books;[40]

(v) the intended accounting treatment and estimate[41] of the accounting value of the position;

(vi) the motivation for the inclusion of the position in the trading book and arguments for this treatment compared with other positions in the same/similar instruments held in the non-trading book (if any);

(vii) internal approval for the application of Article 104(5) of the CRR;

(viii) relevant audit reports pursuant to Article 104(1) of the CRR;

(ix) evidence that the position is held with trading intent or hedges positions held with trading intent;

(x) evidence that the institution is able to obtain sufficient information about the individual underlying exposures of the hedge fund or that it has knowledge of the content of the mandate of the hedge fund and is able to obtain daily price quotes for the hedge fund.

The ECB expects that credit institutions maintain, on an ongoing basis, an overview (including exposure values) of the hedge funds assigned to the trading book pursuant to approval granted under Article 104(5) of the CRR and provide it to the ECB on demand.

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[40] The assessment should take into account the expected maximum size of the positions subject to the applied discretion.

[41] The assessment should take into account the expected maximum size of the positions subject to the applied discretion.

5. CALCULATION OF RISK-WEIGHTED EXPOSURE AMOUNTS – INTRAGROUP EXPOSURES (Article 113(6) of the CRR)

The ECB is of the view that a request not to apply the requirements of Article 113(1) of the CRR may be approved, following a case-by-case assessment, for credit institutions that submit a specific application. As clearly established in Article 113(6), point (a), the counterparty of the credit institution must be another institution or financial institution subject to appropriate prudential requirements. Moreover, the counterparty must be established in the same Member State as the credit institution (Article 113(6), point (d)).

For the purposes of this assessment, the ECB will consider the following factors.

(1) To assess compliance with the requirement, as laid down in Article 113(6), point (b), of the CRR, that the counterparty is included in the same consolidation as the institution on a full basis, the ECB will take into account whether the group entities under assessment are included within the same consolidation on a full basis in a participating Member State, using the methods for prudential consolidation set out in Article 18 of the CRR.

(2) To assess compliance with the requirement laid down in Article 113(6), point (c), of the CRR that the counterparty is subject to the same risk evaluation, measurement and control procedures as the institution, the ECB will take into account whether:

(i) the senior management of the entities in the scope of application of Article 113(6) of the CRR is responsible for risk management and risk measurement is regularly reviewed;

(ii) regular and transparent communication mechanisms are established within the organisation, so that the management body, senior management, business lines, the risk management function and other control functions can all share information about risk measurement, analysis and monitoring;

(iii) internal procedures and information systems are consistent and reliable throughout the consolidated group so that all sources of relevant risks can be identified, measured and monitored on a consolidated basis and also, to the extent necessary, separately by entity, business line, and portfolio;

(iv) key risk information is regularly reported to the central risk management function of the parent undertaking to enable appropriate centralised evaluation, measurement and control of risk across the relevant group entities.

(3) To assess compliance with the requirement laid down in Article 113(6), point (e), of the CRR that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from

the counterparty to the institution[42], the ECB will take into account whether or not:

(i) the shareholding and legal structure of the group hampers the transferability of own funds or repayment of liabilities;

(ii) the formal decision-making process regarding the transfer of own funds between the institution and its counterparty ensures prompt transfers;

(iii) the by-laws of the institution and of the counterparty, any shareholders' agreement, or any other known agreements contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the counterparty to the institution;

(iv) there have been any previous serious management difficulties or corporate governance issues that might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(v) third parties are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(vi) the COREP "Group Solvency" template, which aims to provide a global view of how risks and own funds are distributed within the group, shows any discrepancy in this regard.

- **Documentation related to approval decisions under Article 113(6)**

For the purpose of the assessment(s) under Article 113(6) of the CRR, it is expected that the credit institution presenting the application submits the following documents, unless they have already been provided to the ECB pursuant to other regulations, decisions or requirements:

(i) an up-to-date organisation chart of the entities of the consolidated group included within the scope of consolidation on a full basis in the same Member State, the prudential qualification of the individual entities (credit institution, investment firm, financial institution) and the identification of the entities that intend to apply Article 113(6) of the CRR;

(ii) a description of the risk management policies and controls and how they are centrally defined and applied;

(iii) the contractual basis, if any, for the group-wide risk management framework, together with additional documentation such as the group company risk policies in the areas of credit risk, market risk, liquidity risk and operational risk;

(iv) a description of the possibilities for the parent institution/undertaking to enforce group-wide risk management;

[42] Beyond the limitations stemming from national company law.

(v) a description of the mechanism that ensures a prompt transfer of own funds and the repayment of liabilities by one of the group entities in the event of financial distress;

(vi) a cover letter signed by the legal representative of the parent undertaking pursuant to applicable law, with approval from the management body, stating that the significant supervised credit institution complies with all conditions as set out in Article 113(6) of the CRR at the group level;

(vii) a legal opinion, issued by an external independent third party or by an internal legal department and approved by the management body of the parent undertaking, demonstrating that beyond the limitations set out in company law there are no obstacles to the transfer of funds or repayment of liabilities resulting from either applicable legislative or regulatory acts (including fiscal legislation) or legally binding agreements;

(viii) a statement signed by the legal representatives and approved by the management bodies of the parent undertaking and of the group entities that intend to apply Article 113(6) of the CRR declaring that there are no practical impediments to fund transfer or repayment of liabilities.

6. EQUITY EXPOSURES INCURRED UNDER LEGISLATIVE PROGRAMMES TO STIMULATE SPECIFIED SECTORS OF THE ECONOMY (Article 133(5) of the CRR)

The ECB will assess compliance with the conditions laid down in Article 133(5), points (a) to (c), of the CRR on a case-by-case basis, considering the details of each specific legislative programme. The ECB expects that the combined effects of significant subsidies or guarantees, government oversight and other restrictions on the equity investment should be substantial in terms of risk reduction and generally commensurate with the reduction in risk weights from applying the derogation in Article 133(5). The significant subsidies mentioned in Article 133(5), point (a), may include, inter alia, general guarantees provided by the European Union, which are linked to financial recovery and resilience plans, or which are designed to mobilise private capital, including to support strategic businesses. The ECB is of the view that generally the risk reduction should not depend on the profitability of the investment, as this would not reduce the risk of loss in the event that the investment fails. The ECB considers that in general, legislative programmes that provide tax relief solely on uncertain future profits from the investment would not adequately reduce the risk to the credit institution.

7. COLLECTION OF DATA (Article 179 of the CRR)

For the purposes of the last sentence of the second sub-paragraph of Article 179(1) of the CRR, the ECB intends to allow credit institutions some flexibility in the application of the required standards for data collected prior to 1 January 2007, provided that the institutions concerned have made the appropriate adjustments to achieve broad equivalence with the definition of default laid down in Article 178 of the CRR or with the definition of loss laid down in Article 5(2) of the CRR.

8. SIGNIFICANT RISK TRANSFER (SRT; Articles 244(2) and (3) and 245(2) and (3) of the CRR)

The ECB expects that institutions acting as originators and that intend:

(i) to recognise SRT in accordance with Article 244(2) or Article 245(2) of the CRR; or

(ii) to apply for a permission in accordance with Article 244(3) or Article 245(3) of the CRR;

notify the ECB in accordance with the public guidance on the recognition of significant credit risk transfer.[43]

The ECB intends to assess SRT securitisations in accordance with the EBA Guidelines on significant credit risk transfer.[44]

- **Assessment of the significance of transferred credit risk**

(1) SRT in accordance with Article 244(2) or 245(2) of the CRR

For cases falling under point (i) above, the conditions specified in Articles 244(2) or 245(2) of the CRR have to be fulfilled. More specifically:

(i) if the securitisation transaction includes mezzanine positions, the originator will have to demonstrate that it fulfils the condition set out in Article 244(2), point (a), or Article 245(2), point (a);

(ii) in other cases, the originator will have to demonstrate that it fulfils the conditions set in Article 244(2), point (b), or Article 245(2), point (b).

In both cases, the ECB assesses with particular attention the thickness of the securitisation tranches used as relevant tranches to demonstrate SRT.

Even if the conditions in one of these two cases are met, the ECB may still consider that significant credit risk has not been transferred to third parties where the reduction in risk-weighted exposure amounts (RWEAs) that would be achieved through SRT is not justified by a commensurate transfer of credit risk to third parties.

In order to assess whether or not the reduction in RWEAs is justified by the risk transferred, the ECB will use, in particular, a quantitative test which compares the reduction in capital requirements achieved by the originator with the share of credit risk losses transferred to third parties through the securitisation. This quantitative test is met if the capital relief (Ratio 1) is lower than or equal to the risk transferred (Ratio 2).

Ratio 1 is the difference between (a) the own funds requirements on the whole underlying portfolio before securitisation, calculated according to the general credit

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[43] "Public guidance on the recognition of significant credit risk transfer", letter from the Chair of the Supervisory Board to the management of significant banks, 24 March 2016.

[44] Guidelines on Significant Credit Risk Transfer relating to Articles 243 and Article 244 of Regulation 575/2013 (EBA/GL/2014/05), EBA, July 2014.

risk framework, including the expected loss (EL) shortfall where applicable, and (b) the own funds requirements on the positions retained by the originator after securitisation divided by the own funds requirements on the whole underlying portfolio before securitisation, calculated according to the general credit risk framework, including the EL shortfall where applicable.

Ratio 2 is the sum of the lifetime EL + regulatory unexpected losses (UL) of the underlying portfolio allocated to securitisation positions transferred to third parties divided by the sum of the lifetime EL + regulatory UL of the whole underlying portfolio.

This test will be considered at the time of origination of the securitisation in a way that covers the whole life of the securitisation under different scenarios, covering not only base-case but also stress conditions, and that should capture all the structural features of the securitisation. These structural features should be reflected in the cash flow models that the originator is recommended to provide in accordance with point D.12 of Annex I of the ECB's public guidance on SRT.

The ECB will also check that the main inputs into this test, which should be provided by the originator in accordance with the ECB's public guidance on SRT, are correctly calculated.

The ECB carries out a comprehensive review of the securitisations of which it is notified under its public guidance on SRT (see also Title II, Section 3 of the EBA Guidelines on significant credit risk transfer).

For repeat transactions and transactions without innovative features or structural features that might induce further complexity, the comprehensive review is generally very streamlined. However, for complex transactions and transactions originated by institutions with little or no experience of securitisation, the comprehensive review may take longer in order to ensure the risk transfer is genuine.

During this comprehensive review, the ECB will consider in particular:

(i) how the transferred credit risk has been measured;

(ii) whether the structural features of the securitisation may undermine the transfer of significant credit risk over the life of the securitisation, including in stress conditions;

(iii) whether there are maturity and/or currency mismatches between the credit protection and underlying assets for synthetic securitisations;

(iv) whether the cost of credit protection for synthetic securitisation is so high that it would undermine the transfer of credit risk;

(v) whether the protection used for synthetic securitisations complies with the requirements of Part Three, Title III, Chapter 4 of the CRR on credit mitigation and provides sufficient certainty of payment;

(vi) whether credit risk is transferred to investors that are third parties vis-à-vis the originator;

(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.

In cases where the SRT is assessed under Article 244(2) or 245(2) of the CRR, the ECB intends to adopt a formal decision only where it objects to the SRT in accordance with Article 244(2) or 245(2), as applicable. Where the ECB does not object to the SRT, it intends to use an operational act.

(2) SRT in accordance with Article 244(3) or 245(3) of the CRR

These securitisations always require an individual positive decision by the ECB to authorise the originator to recognise the SRT.

The ECB intends to always conduct a comprehensive review of the securitisation, as described in point (1) above, when SRT is sought in accordance with Article 244(3) or 245(3) of the CRR.

The ECB also intends to check that the securitisation meets the quantitative test described in point (1) above.

- **Assessment of the effectiveness of the transferred credit risk**

In addition to the points mentioned under point (1) above, the ECB will also check that the requirements to demonstrate the effectiveness of the credit risk transfer, as listed in Article 244(4) or 245(4) of the CRR, as relevant to the securitisation, are met. To this effect, the ECB will use the documentation provided by the originator in accordance with the ECB's public guidance on SRT.

- **Governance of SRT**

The ECB will also check that the originator has appropriate governance and policies for making its own assessment of credit risk transfer and SRT. For this check, the ECB will use the documentation provided by the originator in accordance with Annex I, point D.10, of the ECB's public guidance on SRT.

9. IMPLEMENTATION OF THE INTERNAL MODEL METHOD (Article 283(3) of the CRR)

The ECB intends to permit institutions to implement for a limited period the internal model method (IMM), pursuant to Article 283(3) of the CRR, sequentially across different transaction types following a case-by-case assessment.

For the purpose of this assessment, the ECB plans to take into account whether:

(i) the initial coverage at the time of approval comprises “plain vanilla” interest rate and FX derivatives and covers 50% of both the risk-weighted assets (RWA; as calculated with exposures based on the chosen non-IMM method in accordance with Article 271(1) of the CRR) and the number of trades (i.e. legal transactions, no single legs);

(ii) a coverage of more than 65% in terms of RWA (based on either IMM or non-IMM methods, depending on the trade) and more than 70% in terms of the number of trades (legal transactions, no single legs) relative to total counterparty credit risk is achieved within three years;

(iii) if a portion larger than 35% (RWA) or 30% (number of trades) remains outside the IMM after the three-year period, it is expected that the credit institution proves that either the remaining transaction types cannot be modelled, owing to missing calibration data, or that the standardised approach exposures used are sufficiently conservative.

10. CALCULATION OF THE EXPOSURE VALUE FOR COUNTERPARTY CREDIT RISK (Article 284(4) and (9) of the CRR)

The ECB intends to assess the necessity of requiring a higher α factor than 1.4 for the purpose of calculating the exposure value pursuant to Article 284(4) of the CRR, on a case-by-case basis depending on model deficits and model risk. Moreover, it considers that, for prudential purposes, α should in principle be the value stipulated in the said paragraph.

11. DEROGATION TO CALCULATE A SEPARATE INTEREST, LEASES AND DIVIDENDS COMPONENT FOR SPECIFIC SUBSIDIARIES (Article 314(3) of the CRR)

The ECB will assess applications for permission to calculate a separate interest, leases and dividends component for specific subsidiaries, in accordance with the derogation provided for in Article 314(3) of the CRR, taking into account the following:

With regard to the condition laid down in Article 314(3), point (b), of the CRR, that a significant proportion of the subsidiaries’ retail or commercial banking activities comprise loans associated with a high probability of default (PD), the ECB will take into account whether the credit institution seeking the permission provides evidence that 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 similar loans of the parent credit institution measured on an individual basis over the same period.

With regard to the condition laid down in Article 314(3), point (c), of the CRR, that use of the derogation provides an appropriate basis for calculating the credit institution’s own funds requirements for operational risk, the ECB will take into account whether:

(i) the credit institution's loss component calculated on a consolidated basis before the application of the derogation or due to the derogation does not exceed its business indicator component calculated on a consolidated basis (for this purpose, its loss component should be calculated by multiplying its average annual operational risk losses over the last five years by 15);

(ii) the credit institution's ratio of operational losses to operational risk capital requirements, calculated on a consolidated basis over the last five years, exceeds the ratio of operational losses to operational risk capital requirements of the subsidiary in respect of which the derogation has been requested, calculated on an individual basis over the same five-year period.

In exceptional circumstances, applications for the derogation in Article 314(3) of the CRR from credit institutions which do not meet the criteria set out above may still be approved on a case-by-case basis where this is duly justified by well-founded prudential arguments.

12. INTERNAL REVIEW OF THE USE OF THE ALTERNATIVE STANDARDISED APPROACH (ASA) TO THE SATISFACTION OF THE COMPETENT AUTHORITY AND FREQUENCY OF SUCH REVIEW (Article 325c of the CRR)

(1) The ECB intends to assess the fulfilment of the requirements of Article 325c of the CRR in an integrated manner through an overarching self-assessment questionnaire (SAQ), covering: the independent review process of the credit institutions pursuant to Article 325c(5) of the CRR; the fulfilment of the conditions for reducing the frequency of this review to once every two years pursuant to Article 325c(6), second sub-paragraph, of the CRR; and the supervisory verification process of the ASA implementation integrity pursuant to Article 325c(7) of the CRR. The ECB may adapt the SAQ after the entry into force of the EBA Regulatory Technical Standard (RTS) on the assessment methodology pursuant to Article 325c(8) of the CRR.

(2) The ECB expects that the independent review process pursuant to Article 325c(5) of the CRR is applied according to an adequate and regular audit cycle as part of the annual audit work plan. For this purpose, the ECB will provide the SAQ to the credit institutions and the ECB expects that credit institutions use the latest available version of the SAQ. While the ECB expects that the SAQ is submitted on a yearly basis with all relevant changes, this does not interfere with credit institutions' regular audit cycle (see also point 5 of this subsection).[45]

(3) The ECB expects that the scope of the independent review process pursuant to Article 325c(6), point (b), of the CRR covers, among other things, a comprehensive inventory of all instruments within the relevant scope of the

[45] The frequency of the SAQ follows the frequency of the independent review process of the credit institution concerned.

ASA. This inventory should include the following information at the relevant level of granularity:

(i) the type of instrument (class), including a brief description of the instrument;

(ii) the relevant pricing models/methodologies used to calculate sensitivities and curvature risk positions for the sensitivities-based method (SBM), the jump-to-default amounts for the default risk charge (DRC) and the notional amounts for the residual risk add-on (RRAO) component;

(iii) a classification according to whether the instrument is considered to have optionality in accordance with Article 325e of the CRR and which of the risk measures (delta, vega, curvature) are relevant for the instrument;

(iv) an overview of the regulatory SBM risk factors that enter:

(a) the pricing model used in the end-of-day valuation process,

(b) the institution's implementation of the SBM;

The institution should document all disparities, especially when regulatory risk factors are missing in the pricing models implemented.

(v) a classification of whether the instrument would fall within the scope of the RRAO in accordance with Article 325u of the CRR, notwithstanding any exemptions from the RRAO.

(4) For the initial independent review assessment, a comprehensive assessment of all the aspects referred to in Article 325c(6), first sub-paragraph, points (a) to (d), of the CRR must be performed by every credit institution which applies the ASA, regardless of whether the ASA is used alone or in conjunction with the alternative internal model approach (AIMA).

(5) For subsequent periodic independent reviews, the ECB expects that credit institutions perform a comprehensive assessment of all the aspects of the ASA prescribed by Article 325c(6) of the CRR at least every three years (four years if a lower review frequency is applicable) within the audit cycle, including the assessment of permissions granted under Part Three, Title IV, Chapter 1a of the CRR.[46]

(6) The audit cycle must be properly documented, reflecting the frequency of the review of each aspect[47] as referred to in paragraph 5 above, as well as the last review date for these aspects.

(7) Notwithstanding the provisions of paragraph 6 above, the ECB expects that any aspects which have been subject to changes since the previous independent periodic review, either in the governance, policies, methodologies or processes,

[46] According to Articles 325b, 325e(3), 325j(1) and (2), 325q(6) and (7) and 325t(5) and (6) of the CRR.

[47] Aspects as addressed in Article 325c(6), points (a) to (d), of the CRR.

are included in the scope of the annual review[48], including aspects relevant for permissions granted under Part Three, Title IV, Chapter 1a of the CRR.

(8) The ECB expects that credit institutions document and track the findings identified as a result of the annual independent review[49], including the severity of each finding (for this purpose, a traffic light approach is included as part of the SAQ). In this regard, the ECB expects that credit institutions develop a remediation plan to overcome the main weaknesses raised by the independent review, detailing, for each finding, the remedial actions to be performed, including their internal owner and expected deadline.

(9) The ECB expects that the internal audit function monitors the progress of the remedial actions derived from previous reviews, keeping track of open findings and assessing whether previous findings are to be closed, based on evidence provided by their internal owners and the assessment performed by internal audit.

(10) For the purpose of the assessment of compliance with the specifications in Article 325c of the CRR (as detailed in paragraph 3 above), it is expected that the credit institution submits the following information to the ECB:

(i) the updated SAQ, according to the latest available version;

(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, including, where applicable, the follow-up on the remedial actions derived from previous independent reviews.

(11) The ECB expects that credit institutions submit a request to the ECB as part of the SAQ if they would like to apply a lower frequency for the independent review process pursuant to Article 325c(6) of the CRR or if the credit institution is no longer suitable for such treatment. As a follow-up to the assessment of the SAQ (see paragraph 3 above), the ECB plans to communicate to the credit institutions both its decision on whether they are classified as suitable to apply the discretion to use such reduced frequency for the independent review process and any subsequent change in this classification.

(12) For the determination of whether a credit institution is considered to be suitable to apply a lower independent review frequency, the ECB plans to review the following criteria as part of the SAQ data:

(i) whether the ASA is applied on voluntarily basis by the credit institution;[50]

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48 Biennial review if the option set out in Article 325c(6), second sub-paragraph, of the CRR applies.

49 Biennial independent review if the option set out in Article 325c(6), second sub-paragraph, of the CRR applies.

50 Where the credit institution falls below the thresholds of Article 325a of the CRR.

(ii) whether the credit institution is classified as systemically important;

(iii) whether the credit institution has the permission to use the AIMA for market risk;

(iv) whether the RRAO charge is significant within the ASA;

(v) whether the market risk is business significant for the credit institution;[51]

(vi) the scope of market risk business;[52]

(vii) whether non-linear market risk is significant for the SBM;[53]

(viii) whether the ASA is material.[54]

In addition to these criteria, the ECB plans to consider further relevant information such as significant deficiencies identified by the SAQ, SREP market risk/governance scores, and open findings from inspections or other reviews.

13. PERMISSION TO USE THE ALTERNATIVE DEFINITION OF SENSITIVITIES (DELTA AND VEGA) (Article 325t(5) and (6) of the CRR)

(1) This section sets out the ECB's supervisory assessment process for the application of alternative delta and vega sensitivities for the SBM of the ASA. The ECB intends to base the assessment of the materiality of the differences between credit institutions' internal and regulatory definitions on qualitative criteria as set out below. The ECB considers, on a qualitative basis, that alternative sensitivities are not materially different from the regulatory definitions when the alternative definitions reflect first-order approximations of the reactivity of instrument values to changes in the relevant risk factors.[55] For example, the bump sizes could be set at different levels, and instead of one-sided bumps, two-sided bumps could be applied, or analytical derivatives could be used, if this results in a more appropriate risk measurement for the credit institution's trading portfolio.

(2) The ECB expects that credit institutions are able to demonstrate the greater appropriateness of alternative sensitivities compared with the regulatory standard definitions, as required by Article 325t(5), point (b), and (6), point (b), of the CRR. This can be demonstrated through better alignment with industry best practices or by leading to a higher quality of calculated sensitivities, e.g. with improved numerical stability or improved calculation accuracy or efficiency, or better alignment with analytical solutions.

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51 As defined in Article 325a(1), point (a), of the CRR.

52 Reflected in the number of ASA risk sub-asset classes based on the market risk data in COREP.

53 Curvature and vega risks in relation to the SBM.

54 ASA own funds requirements in relation to a credit institution's total RWA.

55 Relevant market best practices cover various techniques, such as adjoint algorithmic differentiation (AAD) or, for vega sensitivities, transformations based on calculations with normal or log-normal distribution or stochastic alpha, beta, rho (SABR) models.

(3) The ECB expects more flexibility for credit institutions with the application of this qualitative materiality criterion. Already approved applications remain valid and allow for a potential extension of the scope of alternative sensitivities, which are considered to be numerically more stable and more risk sensitive. At the same time, the ECB expects that the omission of parallel implementations of regulatory and internal credit institution sensitivity formulae simplifies the monitoring process, while the focus is shifted more onto the quality of the applied sensitivities and their underlying pricing instruments, as these represent the building blocks of the ASA.

(4) The ECB is of the view that alternative definitions for delta and vega sensitivities can be applied for a selected set of risk classes, instrument classes or instruments in combination with regulatory sensitivity definitions. The ECB expects that in general,[56] for the same instrument and risk factor, the same sensitivity definitions are applied consistently.

(5) The ECB expects that banks using alternative sensitivity definitions pursuant to Article 325t(5) and (6) of the CRR provide, when applying for the discretion, an inventory of all alternative sensitivity definitions. This inventory should be maintained on an ongoing basis and be provided to the ECB on demand. It should include the following information at the relevant level of granularity (the level of granularity should include at least each unique alternative sensitivity definition, whereby a specific alternative sensitivity definition may be used in the context of more than one instrument type or risk factor):

    (i) the precise definition of the alternative sensitivity (depending on the type of sensitivity, this may include aspects such as direction, bump size, or application of shift);

    (ii) the scope of instruments, risk classes and risk factors to which the alternative sensitivity is applied;

    (iii) documentation on whether the alternative sensitivity definition is:

        (a) used for risk management purposes;

        (b) used for profit and loss reporting to senior management;

        (c) owned by an independent risk unit;

        (d) more appropriate than the corresponding regulatory sensitivity definition.

(6) The ECB will assess whether credit institutions have implemented validation and audit processes that cover the definition and implementation of the alternative sensitivities.

[56] As an exception to the general expectation, different vendor/pricing systems could be in place with different methodologies for different risk classes.

(7) The ECB expects that credit institutions establish an ongoing monitoring process for the use of the alternative sensitivities. The monitoring should cover the relevant processes[57] and changes in the implementation as well as identified non-compliance with regulatory requirements. The results of the monitoring process should be communicated internally within the credit institution and, in the case of non-compliance, to the supervisor in a timely manner. For the credit institution's internal communication, the ECB is of the view that credit institutions should apply their internally defined escalation procedures.

(8) For the purpose of the assessment under Article 325t(5) and (6) of the CRR, it is expected that credit institutions submit the following documents, which the ECB will consider when assessing the fulfilment of the conditions set out in the legislation:

(i) the rationale for the use of alternative sensitivities, including evidence of the fulfilment of the requirements of Article 325t of the CRR, including:

(a) an overview of risk management and P&L reporting processes (including organisational charts, roles);

(b) the current and last three relevant risk management and P&L reports (daily, monthly, quarterly);

(c) an overview of affected instruments/instrument classes and risk classes; type/short description of alternative definitions, including a rationale confirming that the alternative definition is used for risk management purposes or reporting P&L to senior management;

(d) an explanation that alternative sensitivity definitions do not differ materially from the regulatory definitions (see the qualitative criterion in paragraph 1 above);

(e) the appropriateness of alternative sensitivity definitions (see paragraph 2 above);

(ii) relevant internal audit reports, covering:

(a) alternative sensitivity implementation;

(b) validation;

(c) relevant risk control processes covering P&L reporting;

(d) open audit findings related to sensitivity calculation methods (excluding pricing model issues);

(iii) documentation monitoring, including the communication process (see above).

[57] Such as data quality, calculation and technical processes.

14. CALCULATION OF THE VALUE-AT-RISK NUMBER (Article 366(4) of the CRR)

The ECB is of the view that the calculation of the addend for the purpose of calculating the own funds requirement referred to in Articles 364 and 365 of the CRR should be based on hypothetical and actual changes in the portfolio value, in accordance with the specifications set out in Article 366(3).

15. OWN FUNDS REQUIREMENTS FOR DELTA AND VEGA RISKS FOR STANDARDISED APPROACH CREDIT VALUATION ADJUSTMENTS (SA-CVA) (ALTERNATIVE SENSITIVITIES) (Article 383b(2) of the CRR)

When assessing requests for permission to use alternative definitions of delta and vega risk sensitivities in the calculation of the own funds requirements of a trading book position under Part Three, Title VI of the CRR, the ECB intends to follow the same approach, mutatis mutandis, as it intends to follow when assessing applications to use alternative delta and vega sensitivities for the purposes of Article 325t(5) and (6) of the CRR as set out in this Guide.

16. USE OF INTERNAL RATINGS TO DETERMINE CREDIT QUALITY STEPS FOR SA-CVA AND BASIC APPROACH CREDIT VALUATION ADJUSTMENTS (BA-CVA) (Article 383p, 338s and 384(2) of the CRR)

The ECB is of the view that the use of internal ratings for the determination of credit quality steps should be approved only under the following conditions:

(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.

Chapter 4
Institutional protection schemes

1. This chapter sets out the ECB's policy on options and discretions that are relevant for credit institutions that have entered into an institutional protection scheme (IPS).

2. Parts One, Two and Three of the CRR, as well as Commission Delegated Regulation (EU) 2015/61, set out the relevant legislative and regulatory framework.

3. LIQUIDITY WAIVERS (Article 8(4) of the CRR)

   The ECB intends to grant waivers under Article 8(4) of the CRR to credit institutions which are members of the same IPS provided that all the conditions laid down in Article 113(7) of the CRR are fulfilled. Reporting requirements at individual sub-entity level are to be maintained.

   For the purposes of this assessment, the relevant specifications and/or documents mentioned in Chapter 1 above will be applied, specifically points 1 to 5 relating to the general conditions for all liquidity waivers in accordance with Article 8 of the CRR as well as the further specifications for waivers of the LCR and NSFR requirements, as appropriate.

   As for the documents required, the credit institution must submit in addition:

   (i) proof that a valid power of attorney has been granted and a copy of the signature of the attorney appointed;

   (ii) a legal contract that stipulates that the sub-consolidated entity has irrevocable control rights over the waived entities within the liquidity risk framework.

4. DEDUCTION OF HOLDINGS IN THE PRESENCE OF INSTITUTIONAL PROTECTION SCHEMES (Article 49(3) of the CRR)

   The ECB expects the information set out in Article 49(3) of the CRR to be reported in accordance with the specifications set out in this section. Once the implementing technical standards are applicable, the specifications regarding the frequency and format of the reporting will be reviewed and amended, if necessary.

   The ECB intends to permit institutions, on a case-by-case basis, to not deduct holdings of own funds instruments in other institutions falling within the same IPS for the purposes of calculating own funds on an individual or sub-consolidated basis, provided that the conditions set out in Article 49(3) of the CRR are fulfilled. For the purpose of this assessment the ECB will take into account whether the following criteria, specifying the conditions of the legal framework, have been met:

   (1) Article 49(3), point (a)(iv), of the CRR requires the equivalence of the extended aggregated calculation of an IPS with the provisions of Directive 86/635/EEC[58]

[58] Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

governing the consolidated accounts of groups of credit institutions to be shown. The calculation must be verified by an external auditor and the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the IPS must be eliminated from the calculation.

(i) The external auditor who is responsible for the audit of the extended aggregated calculation must confirm annually that:

(a) the aggregation method ensures that all intragroup exposures are eliminated;

(b) the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the IPS has been eliminated;

(c) no other transactions by the members of the IPS have led to an inappropriate creation of own funds at the consolidated level.

(2) Article 49(3), point (a)(iv), last sentence, of the CRR requires the consolidated balance sheet or the extended aggregated calculation of the IPS to be reported to the competent authorities no less frequently than the frequency set out in the implementing technical standards referred to in Article 430(7) of the CRR. The following reporting standards must be adhered to.

(i) Information on the consolidated balance sheet or the extended aggregated calculation must be reported at least on a semi-annual basis.

(ii) The information on the consolidated balance sheet or the extended aggregated calculation must comply with Regulation (EU) 2015/534 (ECB/2015/13) as follows:

(a) IPSs that draw up a consolidated balance sheet applying IFRS must report full FINREP.

(b) All other IPSs must provide supervisory financial reporting data points (Annex IV to Regulation (EU) 2015/534 (ECB/2015/13)). The IPS must only report financial reporting data points that have to be reported by all IPS member institutions on an individual basis.

(3) Article 49(3), point (a)(v), of the CRR requires that together the institutions included in an IPS meet, on a consolidated or extended aggregated basis, the own funds requirements laid down in Article 92 of the CRR, and carry out reporting of compliance with those requirements in accordance with Article 430 of the CRR. The ECB will consider the following factors in assessing compliance with this criterion.

(i) All intragroup exposures and participations between IPS members must be eliminated within the consolidation/aggregation.

(ii) The data provided by the IPS member institutions must be based on the same accounting standards, or an adequate transformation calculation must be conducted.

(iii) The entity responsible for the preparation of the consolidated reports on own funds must perform adequate quality assurance on the data provided by the IPS member institutions and review at regular intervals its own IT systems that are used to prepare the consolidated reporting.

(iv) The minimum frequency of the reporting must be on a quarterly basis.

(v) The reporting must use the COREP templates set out in Annex I of Commission Implementing Regulation (EU) No 2021/451. The reporting on own funds and own funds requirements on an extended aggregated basis must be based on the individual reports on own funds and own funds requirements of the IPS member institutions.

(4) In determining for the purposes of Article 49(3), point (a)(v), second sentence, of the CRR whether within an IPS the deduction of the interest owned by cooperative members or legal entities which are not members of the IPS is required, the ECB will not require such deduction provided that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the IPS and the minority shareholder, when it is an institution, is eliminated. The ECB will take into account:

(i) the extent to which minority interests that are held by institutions which are not members of the IPS are included within the calculation of own funds at the consolidated/aggregated level;

(ii) whether the minority interests are implicitly included in the total own funds of the institutions that own the minority interests;

(iii) whether the IPS applies Articles 84, 85 and 86 of the CRR when calculating the own funds on a consolidated/extended aggregated basis regarding the minority interests that are held by institutions which are not IPS members.

5. RECOGNITION OF INSTITUTIONAL PROTECTION SCHEMES FOR PRUDENTIAL PURPOSES (Article 113(7) of the CRR)

This paragraph sets out the specific criteria the ECB will follow when assessing individual applications for the prudential permission referred to in Article 113(7) of the CRR by supervised credit institutions that are members of an IPS.

The ECB will grant permission to institutions, on a case-by-case basis, not to apply the requirements of Article 113(1) of the CRR to exposures to counterparties with which the institution has entered into an IPS and to assign a 0% risk weight to those exposures, provided that the conditions set out in Article 113(7) of the CRR are fulfilled.

Before carrying out a detailed supervisory assessment on the basis of points (a) to (i) of Article 113(7) of the CRR, the ECB will first assess whether the IPS can provide sufficient support in the event that a member institution faces severe financial constraints regarding liquidity and/or solvency. Article 113(7) of the CRR does not determine a specific point in time where support to ensure liquidity and solvency must be provided in order to avoid insolvency. By making proactive and timely interventions the IPS should ensure that its member institutions abide by the regulatory own funds and liquidity requirements. If such preventive measures are not sufficient, the IPS needs to decide on material or financial support. Intervention by the IPS is deemed to be triggered, at the latest, where there is no reasonable prospect that any other measures would prevent the failure of that institution. As part of its contractual or statutory arrangements, the IPS should have in place a broad range of measures, processes and mechanisms which make up the framework under which it operates. This framework should comprise a suite of available actions ranging from less intrusive measures, such as closer monitoring of the member institutions on the basis of relevant indicators and additional reporting requirements, to more substantial measures that are proportionate to the riskiness of the beneficiary IPS member institution and the severity of its financial constraints, including direct capital and liquidity support.

For the purposes of assessing whether to grant this permission, the ECB will consider the following factors.

(1) In accordance with Article 113(7), point (a), taken in conjunction with Article 113(6), points (a) and (d), of the CRR, the ECB will verify whether:

    (i) the counterparty is an institution or a financial institution that is subject to appropriate prudential requirements;

    (ii) the IPS members requesting the permission are established in the same Member State.

(2) For the purposes of assessing compliance with the condition laid down in Article 113(7), point (a), taken in conjunction with Article 113(6), point (e), of the CRR, namely that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the institution, the ECB will verify that:

    (i) the shareholding and legal structure of the IPS members does not hamper the transferability of own funds or repayment of liabilities;

    (ii) the formal decision-making process regarding the transfer of own funds between IPS members ensures prompt transfers;

    (iii) neither the by-laws of the IPS members, nor any shareholders' agreements, nor any other known agreements contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the counterparty;

(iv) there have been no previous serious management difficulties or corporate governance issues related to the IPS members that might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(v) no third parties are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(vi) any indications from the past regarding flows of funds between IPS members which demonstrate the ability to promptly transfer funds or repay liabilities are taken into account;

(vii) the crisis management intermediation role and responsibility of the IPS to provide funds to support troubled members is considered key.

(3) When assessing compliance with the condition laid down in Article 113(7), point (b), of the CRR, namely that arrangements are in place which ensure that the IPS is able to grant the support it has committed to provide from funds readily available to it, the ECB will consider the following factors.

(i) The IPS arrangements include a broad range of measures, processes and mechanisms which make up the framework under which the IPS operates. This framework should comprise a series of possible actions, ranging from less intrusive measures to more substantial measures that are proportionate to the riskiness of the beneficiary IPS member institution and the severity of its financial constraints, including direct capital and liquidity support. The IPS should have sufficient intervention rights in the case of IPS support measures.[59] The IPS support should be conditional (for example, upon certain recovery and restructuring measures being launched by the respective institution).

(ii) The governance structure of the IPS and the process for making decisions on support measures allow support to be provided in a timely manner. In general, decision-making should take no more than a few weeks for capital measures and no more than a few days for liquidity measures after the support need has been identified.

(iii) A clear commitment exists on the part of the IPS to provide support when, despite previous monitoring of risks and early support measures, an IPS member is, or is likely to become, insolvent or illiquid. In addition, the IPS should ensure that its member institutions abide by the regulatory own funds and liquidity requirements.

(iv) The IPS conducts stress tests at regular intervals to quantify potential capital and liquidity support measures. Stress scenarios should adequately cater for material idiosyncratic[60] and systemic[61] risks. In this context, the IPS should also consider (i) the extent to which internal spillover effects

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59 This applies to both financial and non-financial support measures by the IPS.

60 Material in the sense that the IPS members' individual vulnerabilities will have a material impact on the IPS as a whole.

61 Material in the sense that systemic risk could cause a material impact on the IPS as a whole.

between IPS entities resulting from potential support cases will exhaust the IPS support capacity, and (ii) how the IPS, when confronted with an extreme support case depleting its support capacity, would ensure that all its members and the IPS as a whole continue to comply with regulatory requirements.

(v) The risk-absorbing capacity of the IPS (consisting of paid-up funds, potential ex post contributions and comparable commitments) is sufficient to cover potential support measures taken in respect of its members.

(vi) An ex ante fund has been created to ensure that the IPS has funds for support measures readily available.

(a) Contributions to the ex ante fund follow a clearly defined framework.

(b) The funds are invested only in liquid and secure assets that may be liquidated at any time and whose value does not depend on the solvency and liquidity position of the members of the IPS and their subsidiaries.

(c) For the determination of the minimum target amount of the ex ante fund the IPS stress test results are considered.

(d) An adequate floor/minimum amount for the ex ante fund is determined to ensure the prompt availability of the funds.

IPSs may be recognised as deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council (the DGS Directive)[62] and may be allowed under the conditions set out in the respective national laws to use the available financial means collected according to the respective national transposition of the DGS Directive for support measures in order to prevent the failure of a credit institution. In this case, the ECB will consider the available financial means when assessing the availability of funds to grant support, taking into account the different purposes of an IPS (which aims to protect its members) and a deposit guarantee scheme (whose key task is to protect depositors against the consequences of the insolvency of a credit institution).

However, this does not imply that the collection of funds according to the respective national transposition of the DGS Directive is also sufficient for IPS purposes. To allow for targeted and proactive intervention by the IPS, it must set up a segregated ex ante fund exclusively for IPS purposes.

(4) Article 113(7), point (c), of the CRR provides that the IPS must have at its disposal suitable and uniformly stipulated systems for the monitoring and classification of risk, which give a complete overview of the risk situation of all the individual members and of the IPS as a whole, with corresponding possibilities to take influence, and that those systems must suitably monitor

[62] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.06.2014, p. 149).

defaulted exposures in accordance with Article 178(1) of the CRR. In assessing compliance with this condition, the ECB will consider whether:

(i) the member institutions of the IPS are obliged to provide the main body[63] responsible for the IPS with up-to-date data on their risk situation at regular intervals, including information on their own funds and own funds requirements;

(ii) the corresponding appropriate data flows and IT systems are in place;

(iii) the main body responsible for the IPS defines uniformly stipulated standards and methodologies for the risk management framework to be applied by the IPS members;

(iv) for the purposes of the monitoring and classification of risk by the IPS there is a common definition of risks, the same risk categories are monitored for all institutions, and the same confidence level and time horizon is used for the quantification of risks; the IPS risk monitoring activities must also contain a forward-looking element in order to anticipate the impact of a potentially deteriorating macroeconomic environment;

(v) the IPS systems for the monitoring and classification of risks classify the IPS members according to their risk situation, i.e. the IPS should define different categories to which to assign its members in order to allow for timely implementation of IPS support measures[64] based on clear indicators triggering proactive decision-making by the IPS;

(vi) the IPS has the possibility to influence the risk situation of the IPS member institutions by issuing instructions, recommendations, etc. to them, for example to restrict certain activities or to require a reduction of certain risks.

(vii) the IPS should have the possibility to commission independent auditors to conduct inspections of its member entities.

(5) When assessing compliance with the condition laid down in Article 113(7), point (d), of the CRR, namely that the IPS conduct its own risk review which is communicated to the individual members, the ECB will consider whether:

(i) the IPS assesses at regular intervals the risks and vulnerabilities of the sector to which its member institutions belong;

(ii) the results of the risk reviews as performed by the main body responsible for the IPS are summarised in a report or other document and are distributed to the relevant decision-making bodies of the IPS and/or the members of the IPS shortly after they have been finalised;

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63 Depending on the organisation of the IPS, the main body could be, for example, an entity or a committee which takes the necessary decisions for the IPS and its members.

64 This applies to both financial and non-financial support measures by the IPS.

(iii) individual members are informed of their risk classification by the IPS as required by Article 113(7), point (c).

(6) Article 113(7), point (e), of the CRR provides that the IPS must draw up and publish on an annual basis a consolidated report comprising the balance sheet, the profit and loss account, the situation report and the risk report, concerning the IPS as a whole, or a report comprising the aggregated balance sheet, the aggregated profit and loss account, the situation report and the risk report, concerning the IPS as a whole. When assessing compliance with this condition, the ECB will verify whether:

(i) the consolidated or aggregated report is audited by an independent external auditor on the basis of the relevant accounting framework or, if applicable, the aggregation method;

(ii) the external auditor is required to provide an audit opinion;

(iii) all members of the IPS, the subsidiaries of all IPS members, any intermediary structures such as holding companies and the special entity steering the IPS itself (if it is a legal entity) are included in the scope of consolidation/aggregation;

(iv) in cases where the IPS draws up a report comprising an aggregated balance sheet and an aggregated profit and loss account, the aggregation method can ensure that all intragroup exposures are eliminated;

(7) In accordance with Article 113(7), point (f), of the CRR, the ECB will verify whether the contract or legal text of the statutory arrangements includes a provision under which members of the IPS are obliged to give advance notice of at least 24 months if they wish to end the IPS. In exceptional circumstances the IPS and its members, in agreement with the competent authorities, may shorten this period.

The ECB is of the view that, when a single IPS member wishes to leave an IPS, that member should ensure that both it and the IPS that it is leaving continue to comply with regulatory requirements, even after it has left the IPS.

(8) Article 113(7), point (g), of the CRR provides that the multiple use of elements eligible for the calculation of own funds (hereinafter referred to as “multiple gearing”) as well as any inappropriate creation of own funds between the members of the IPS must be eliminated. For the purposes of assessing compliance with this requirement, the ECB will verify whether:

(i) the external auditor who is responsible for the audit of the consolidated or aggregated financial report can confirm that multiple gearing, as well as any inappropriate creation of own funds between the members of the IPS, has been eliminated;

(ii) any transactions by the members of the IPS have led to the inappropriate creation of own funds at the individual level, sub-consolidated level or consolidated level.

(9) The ECB's assessment of compliance with the condition laid down in Article 113(7), point (h), of the CRR, namely, that the IPS must be based on a broad membership of credit institutions of a predominantly homogeneous business profile, will be based on the following factors.

(i) The IPS should have sufficient members (among the institutions that are potentially eligible for membership) to cover any support measures it may have to implement.

(ii) The criteria to be considered within the assessment of the business profile include: business model, business strategy, size, customers, regional focus, products, funding structure, material risk categories, sales cooperation and service agreements with other IPS members, etc.

(iii) The different business profiles of the IPS member institutions should allow the monitoring and classification of their risk situations using the uniformly stipulated systems that the IPS has in place (Article 113(7), point (c), of the CRR).

(iv) IPS sectors are often based on collaboration, meaning that central institutions and other specialised institutions in the network offer products and services to other IPS members. When assessing the homogeneity of business profiles the ECB will consider the extent to which the business activities of the IPS members are related to the IPS network (products and services provided to local banks, services to shared customers, capital market activities, etc.).

(10) Article 113(7), point (i), of the CRR provides that the adequacy of the systems referred to in Article 113(7), points (c) and (d), is approved and monitored at regular intervals by the relevant competent authorities. To allow for a thorough monitoring of IPSs consisting of a combination of significant and less-significant institutions concerning compliance with Article 113(7), points (c) and (d), of the CRR, it is important that both authorities – the ECB and the NCA concerned – have access to the same information needed to properly assess the risk situation of the affected IPS member.

The ECB is also of the view that IPS members should maintain an understanding of the magnitude of the prudential relief obtained as a result of the IPS membership. To this end, the ECB expects that IPS members quantify at least annually the benefits connected with the IPS membership and its impact on key regulatory figures. The ECB may request that IPS members provide it with the results of these quantifications.

6. OTHER EXEMPTIONS AND RELEVANT PROVISIONS FOR CREDIT INSTITUTIONS THAT HAVE ENTERED INTO AN INSTITUTIONAL PROTECTION SCHEME

As a direct consequence of permission being granted under Article 113(7) of the CRR, credit institutions may permanently use the “standardised approach” for those exposures in accordance with Article 150(1), point (f), of the CRR. In addition, the exposures in question are exempt from the application of Article 395(1) of the CRR on large exposure limits.

Furthermore, the application of Article 113(7) of the CRR is one of the pre-conditions for granting additional permissions to IPS members, which are:

(i) the application of lower outflow and higher inflow percentages for LCR calculation (Articles 422(8) and 425(4) of the CRR taken in conjunction with Articles 29 and 34 of Commission Delegated Regulation (EU) 2015/61);

(ii) exemption from the cap on inflows under Article 33(2), point (b), of Commission Delegated Regulation (EU) 2015/61;

(iii) the application of higher available stable funding factors or lower required stable funding factors (Article 428h of the CRR). The policy the ECB will apply for these options and discretions is laid down in Chapter 6 of this Guide.

Chapter 5
Large exposures

1. This chapter sets out the ECB’s policy on the treatment of large exposures.

2. Part Four of the CRR sets out the relevant legislative framework.

3. COMPLIANCE WITH THE LARGE EXPOSURES REQUIREMENTS (Articles 395 and 396 of the CRR)

   Where, in exceptional cases, the exposures of credit institutions exceed the limit set in Article 395(1) of the CRR, the ECB intends to allow a limited period of time in which to comply with the limit, pursuant to Article 396(1).

   For the purpose of this assessment, the ECB would more specifically examine whether immediate rectification is viable or not. In the event that such rectification is not viable, the ECB would consider it appropriate to set a time limit by which a rapid rectification would be required. In addition, it is expected that the credit institution shows that the breach of the limit did not result from the usual policy of entering into ordinary credit risk exposures. However, even in these exceptional cases referred to in Article 396(1), the ECB does not consider it appropriate to allow the exposure to exceed 100% of the Tier 1 capital of the credit institution.

4. EXEMPTIONS FROM THE LIMITS TO LARGE EXPOSURES: THIRD-COUNTRY INTRAGROUP EXPOSURES (Article 400(2), point (c), of the CRR)

The ECB intends to exempt, fully or partially, the exposures listed in Article 400(2), point (c), of the CRR, in so far as those exposures incurred are to undertakings that are established in third countries, from the large exposures limit laid down in Article 395(1) of the CRR, provided that the requirements set out in Article 400(3) of the CRR are fulfilled. The ECB intends to grant such exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution.

Credit institutions should state in their applications whether they are applying for a full exemption of the exposures, or for an exemption of only a specific proportion of the exposures. The ECB will take the proposed extent of the exemption into account when conducting the case-by-case prior assessment.

For the purposes of assessing whether the conditions in Article 400(3) of the CRR are fulfilled, in addition to the generally applicable factors reflected in paragraphs 1 and 2 of Annex I of Regulation (EU) 2016/445, the ECB will take into consideration the following non-exhaustive list of factors, as appropriate, in view of the specific circumstances of each credit institution.

(i) There are adequate arrangements in place which enable the ECB to exchange information, including personal data, and cooperate with the competent authority responsible for the prudential supervision of the counterparty on a permanent basis.

(ii) The applicant credit institution would be in a position to provide sufficient regular information on those third-country entities to which it has, or intends to have, exposures which would be covered by the requested exemption, were it to be granted. The existence of obstacles to the applicant credit institution providing such information, for example owing to a prohibition in the legal framework applicable in the third country, should ordinarily be considered as an important deterrent factor for granting the requested exemption.

(iii) The booking practices of the credit institution are aligned with its risk management strategy and risk control mechanisms, at both the individual level and the consolidated level. For the purposes of this assessment, in particular for the purposes of specifying the terms of a potential partial exemption, the ECB's general policy with regard to booking practices should be taken into account.

(iv) The structure of the part of the group which is located outside the EU does not hinder the timely repayment of the exposure by the counterparty to the credit institution.

(v) There have been no negative precedents with regard to the transfer of funds by the counterparty to the credit institution.

(vi) The credit institution has established sound collateral management and independent price verification (IPV) capabilities to ensure (a) intragroup exposures are independently quantified, (b) collateral received is of good

quality and segregated from other group entities, and (c) disputes are promptly resolved.

(vii) The exemption has no disproportionate negative effects on the preferred resolution approach.

- **Documentation related to approval decisions under Article 400(2), point (c), for third-country intragroup exposures**

For the purpose of the assessment(s) under Article 400(2), point (c), of the CRR, it is expected that the credit institution presenting the application submits all the documents required under paragraph 3 of Annex I of Regulation (EU) 2016/445, unless they have already been provided to the ECB pursuant to other regulations, decisions or requirements. In addition, the credit institution should also present the following documentation:

(1) A description of the legal entity structure of the group, identifying all third-country undertakings to which the applicant credit institution has, or intends to have, exposures which would be covered by the requested exemption, were it to be granted.

(2) A statement signed by the legal representative and approved by the management body confirming that:

(i) the applicant credit institution would be able to provide sufficient regular information on those third-country entities to which it has, or intends to have, exposures that would be exempted from the large exposures limits, if the exemption were to be granted;

(ii) there are no obstacles in the legal framework applicable in the relevant third countries that impede the applicant credit institution from providing relevant information to the ECB;

(iii) the booking practices of the credit institution are aligned with its risk management strategy and risk control mechanisms, at both the individual level and the consolidated level;

(iv) the structure of the part of the group which is located outside the EU does not hinder the timely repayment of the exposure by the counterparty to the credit institution;

(v) there have been no relevant negative precedents with regard to the transfer of funds by the relevant undertakings to the credit institution;

(vi) the credit institution has established, as appropriate, sound collateral management and IPV capabilities to ensure (i) intragroup exposures are independently quantified, (ii) collateral received is of good quality and segregated from other group entities, and (iii) disputes are promptly resolved.

The ECB expects that credit institutions notify it of any material change in circumstances that would affect fulfilment of the conditions specified in Article 400(3) of the CRR.

Chapter 6
Liquidity

1. This chapter sets out the ECB's policy on compliance with liquidity requirements and liquidity reporting requirements.

2. The legislative framework for liquidity requirements and reporting requirements is set out in Part Six of the CRR and in Commission Delegated Regulation (EU) 2015/61, which provides for the LCR applicable in the EU, as well as specifying the conditions for establishing a liquidity buffer and calculating liquidity outflows and inflows. This Regulation became applicable on 1 October 2015.

3. COMPLIANCE WITH LIQUIDITY REQUIREMENTS (Article 414 of the CRR)

   The ECB intends to authorise, on a case-by-case basis, lower reporting frequencies (than daily) and longer reporting delays (than by the end of each business day) where a credit institution does not meet, or expects not to meet, the liquidity coverage requirement set out in Article 412(1) of the CRR and further specified in Commission Delegated Regulation (EU) 2015/61 or the stable funding requirement laid down in Article 413(1) of the CRR and further specified in Part Six, Title IV of the CRR, under the conditions stipulated in Article 414 of the CRR. When considering granting this authorisation, the ECB will take into consideration the shorter time horizon of the LCR relative to the NSFR and, thus, the relatively greater importance of more frequent liquidity reporting by credit institutions that do not meet, or expect not to meet, their liquidity coverage requirement relative to credit institutions that do not meet, or expect not to meet, their stable funding requirement.

   In addition to the above requirements, the ECB would consider imposing additional reporting requirements on credit institutions pursuant to Article 16(2), point (j), of the SSM Regulation in the event of a liquidity crisis.

4. CURRENCY MISMATCHES (Article 8(6) of Commission Delegated Regulation (EU) 2015/61)

   The first sentence of Article 8(6) of Commission Delegated Regulation (EU) 2015/61, according to which credit institutions must ensure that the currency denomination of their liquid assets is consistent with the distribution by currency of their net liquidity outflows, does not require credit institutions to comply with a 100% LCR requirement in relation to the LCR in significant currencies (as defined in Article 415(2) of the CRR). Instead, the ECB will assess potential mismatches against the factors referred to under Article 8(6) of Commission Delegated Regulation (EU) 2015/61. Moreover, the ECB will also consider the credit institution-specific contingency plans to resolve currency mismatches during times of idiosyncratic and/or market-wide stress. Based on the above-mentioned assessment, the ECB may then impose a limit on net liquidity outflows addressing currency mismatches in accordance with Article 8(6) of Commission Delegated Regulation (EU) 2015/61 on a case-by-case basis, if deemed necessary.

This is notwithstanding the fact that the ECB will also monitor risks related to currency mismatches more generally by also looking at currency mismatches of assets and liabilities with an effective residual maturity beyond the 30 calendar-day time horizon referred to in the LCR.

5. DIVERSIFICATION OF HOLDINGS OF LIQUID ASSETS (Article 8(1) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to impose restrictions or requirements on credit institutions for the purpose of diversifying their holdings of liquid assets, as specified in Article 8(1) of Commission Delegated Regulation (EU) 2015/61, on a case-by-case basis and possibly implemented via a SREP decision, to be revised annually. Within this context, the ECB will assess, in each individual case, the concentration thresholds by asset class and will, in particular, focus on covered bonds referred to in Articles 10(1), point (f), 11(1), point (c), 11(1), point (d), and 12(1), point (e), of Commission Delegated Regulation (EU) 2015/61, if on aggregate they represent more than 60% of the total amount of liquid assets net of applicable haircuts.

This is notwithstanding the fact that the ECB will also monitor more generally whether credit institutions have policies and limits in place to ensure that the holdings of liquid assets comprising their liquidity buffer remain appropriately diversified at all times, as required by Article 8(1) of Commission Delegated Regulation (EU) 2015/61.

6. MANAGEMENT OF LIQUID ASSETS (Article 8(3) of Commission Delegated Regulation (EU) 2015/61)

In accordance with Article 8(3), point (c), of Commission Delegated Regulation (EU) 2015/61, the ECB intends to permit credit institutions to combine the approaches provided for in Article 8(3), points (a) and (b), of that Regulation, on a consolidated basis or at the level of the liquidity sub-group, where a liquidity waiver has been granted at the individual level in accordance with Article 8 of the CRR. Credit institutions can also be allowed to combine both approaches at individual level, provided that they can explain why the combined approach is needed.

7. ADDITIONAL OUTFLOWS FOR OTHER PRODUCTS AND SERVICES (Article 23(2) of Commission Delegated Regulation (EU) 2015/61)

With regard to the identification of the products and services that fall under Article 23 of Commission Delegated Regulation (EU) 2015/61, the ECB expects that credit institutions consider the high-level principles and examples provided by the EBA in the first EBA report on the implementation of the LCR in the EU[65] or any future publications and specifications by the EBA on this matter.

In accordance with Article 23(2) of Commission Delegated Regulation (EU) 2015/61, the ECB will, at least once a year, collect information from credit institutions on the products and services referred to in Article 23(1) of Commission Delegated

[65] "Monitoring of liquidity coverage ratio implementation in the EU – First report", European Banking Authority, July 2019.

Regulation (EU) 2015/61 for which the likelihood and potential volume of such liquidity outflows are material. The ECB will determine the outflow rates to be applied, either by accepting the outflow rates applied by the credit institutions or by setting the outflow rates itself.

8. HIGHER OUTFLOW RATES (Article 25(3) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to impose supervisory outflow rates pursuant to Article 25(3) of Commission Delegated Regulation (EU) 2015/61, especially in cases where:

(i) empirical evidence shows that the actual outflow rate observed for certain retail deposits is higher than those set out in that Regulation for riskier retail deposits;

(ii) credit institutions develop aggressive marketing policies, such as offering remuneration rates significantly above the average, that present a risk for their liquidity position, as well as a systemic risk, in particular to the extent that they can trigger a change in market practices regarding riskier forms of deposits.

9. OUTFLOWS WITH INTERDEPENDENT INFLOWS (Article 26 of Commission Delegated Regulation (EU) 2015/61)

- **General considerations**

The ECB intends to allow credit institutions with interdependent inflows to calculate the corresponding outflows net of the interdependent inflows pursuant to Article 26 of Commission Delegated Regulation (EU) 2015/61, provided that the applicant credit institution provides evidence that the following criteria, which specify the conditions set out in Article 26 of Commission Delegated Regulation (EU) 2015/61, are met.

(1) Regarding Article 26, point (a), of Commission Delegated Regulation (EU) 2015/61, interdependent inflows and outflows should not be subject to a judgement or discretionary decision of the reporting credit institution.

(2) Regarding Article 26, point (a), of Commission Delegated Regulation (EU) 2015/61, the interdependent inflow should not be captured otherwise in the LCR of the credit institution, in order to avoid double-counting.

(3) Evidence of the legal, regulatory or contractual commitment as required by Article 26, point (b), of Commission Delegated Regulation (EU) 2015/61 should be provided by the credit institution.

(4) When Article 26, point (c)(i), of Commission Delegated Regulation (EU) 2015/61 applies, the credit institution should consider the following:

(i) due consideration should be given to delays in payment systems that could prevent the condition in Article 26, point (c)(i), of Commission Delegated Regulation (EU) 2015/61 from being met;

(ii) in the event of a time lag between the inflow and the outflow, the funds from the inflow should be segregated and held in the form of assets referred to in Title II, Chapter 2 of Commission Delegated Regulation (EU) 2015/61 and, if the inflow arises before the reporting reference date of the LCR, it should not be considered anywhere else in the calculation of the LCR.

(5) When Article 26, point (c)(ii), of Commission Delegated Regulation (EU) 2015/61 applies, the state guarantee, as well as the timing of the inflows, is clearly defined in the applicable legal, regulatory or contractual framework. Existing payment practices are not considered to be sufficient to fulfil this condition. Due consideration should also be given to delays in payment systems regarding interdependent inflows and outflows pursuant to Article 26, point (c)(ii), of Commission Delegated Regulation (EU) 2015/61.

For the purpose of the assessment of compliance with the specifications above, as well as the notification to the EBA referred to in the last paragraph of Article 26 of Commission Delegated Regulation (EU) 2015/61, it is also expected that the applicant credit institution submits to the ECB ex ante information about (i) the outstanding balance of assets, liabilities and off-balance-sheet commitments whose liquidity flows would be treated as interdependent, and (ii) the impact on the net liquidity outflows and the LCR if the ECB were to allow the credit institution to apply the preferential treatment.

- **Specific considerations when applying Article 26 of Commission Delegated Regulation (EU) 2015/61 to debit and credit balances related to accounts that are subject to a notional cash pooling arrangement**

Where the conditions under sub-paragraphs (1) to (5) above are met, the ECB also intends to allow credit institutions to apply Article 26 of Commission Delegated Regulation (EU) 2015/61 to debit and credit balances of accounts that are subject to a notional cash pooling arrangement, i.e. to net the amount of credit balances that is virtually offset by debit balances, provided that the following additional conditions are met.

(i) The accounts associated with the cash pool are maintained in the same individual applicant credit institution or, where applicable, in the same applicant liquidity sub-group under Article 8 of the CRR.

(ii) The cash pooling arrangement meets the conditions referred to in Article 429b(3) of the CRR.

(iii) There are contractual arrangements in place which ensure that the overall net balance of the pool cannot become negative, except to the extent arising from the use of any overdraft facility attached to the cash pool.

(iv) The credit institution can demonstrate that it has the operational capacity to transfer the debit and credit balances of all the parties to any individual cash pooling arrangement into a separate single account at any time.

(v) None of the clients that have access to the cash pool qualify as a credit institution as referred to in Article 4(1), point (1), of the CRR.

The ECB intends to exclude from the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 balances denominated in currencies where there are or might be obstacles to convertibility.

If the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 in relation to a cash pooling arrangement is approved, the credit institution should consider the following aspects.

(i) The netting should only be applied to the current debit and credit balances of the individual accounts which are subject to the notional cash pooling arrangement. By contrast, any undrawn overdraft facility attached to the cash pool or to the individual accounts associated with the cash pool should be treated separately, i.e. for the undrawn amount of these facilities, the credit institution should consider an outflow in accordance with Articles 23 or 31 of Commission Delegated Regulation (EU) 2015/61.

(ii) Any excess debit or credit balance should still be considered in the calculation of the LCR and should be calculated by assuming that debit or credit balances are netted in order of increasing outflow rates and/or decreasing inflow rates.

(iii) If the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 is approved in relation to a cash pooling arrangement involving accounts denominated in multiple currencies, credit institutions should continue treating balances denominated in different currencies on a gross basis for the purpose of reporting in a currency subject to separate reporting in accordance with Article 415(2) of the CRR.

(iv) Where a credit institution or a liquidity sub-group with an EU parent institution in the euro area benefits from the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 in relation to a cash pooling arrangement, any netting approved at individual or liquidity sub-group-level may also be reflected in the calculation of the LCR at the consolidated level.

10. PREFERENTIAL TREATMENT WITHIN A GROUP OR AN IPS (Article 29 of Commission Delegated Regulation (EU) 2015/61)

- **General conditions**

The ECB considers that differentiated treatment, pursuant to Article 422 of the CRR and Article 29 of Commission Delegated Regulation (EU) 2015/61, can be applied to intragroup outflows of credit institutions, following a case-by-case assessment. More specifically, such treatment can be applied for outflows of credit and liquidity facilities only under Article 29 of Commission Delegated Regulation (EU) 2015/61, in cases where waivers of Article 8 or 10 of the CRR were not granted or were partially

granted. This policy applies both for credit institutions established within the same Member State and for credit institutions established in different Member States.

For the purpose of the assessment pursuant to Article 422(8) of the CRR and Article 29(1) of Commission Delegated Regulation (EU) 2015/61 with regard to credit institutions established in the same Member State, the ECB will take into account whether the following criteria, which specify the conditions of the applicable legal framework, are met:

(i) in order to assess whether there are reasons to expect a lower outflow over the next 30 calendar days even under a combined idiosyncratic and market-wide stress scenario, the ECB expects that it will be shown that cancellation clauses for the contract include a notification period of at least six months;

(ii) when a lower outflow rate applies to credit or liquidity facilities, in order to assess whether a corresponding symmetric or more conservative inflow is applied by the facility receiver, the ECB expects that it will be shown that the inflow that could potentially arise from the relevant facility is properly taken into account in the contingency funding plan of the facility-receiving credit institution;

(iii) in the event of the application of Article 422(8) of the CRR, when a lower outflow rate applies to deposits, in order to assess whether a corresponding symmetric or more conservative inflow is applied by the depositor, the ECB expects that it will be shown that the corresponding deposits are not taken into account in the liquidity recovery plan of the liquidity-providing entity, for the purpose of applying Article 422 of the CRR.

- **Additional conditions in the case of an application where the counterparty is located in a different Member State from the applicant credit institution**

For the purpose of this assessment pursuant to Article 422(9) of the CRR and Articles 29(1) and (2) of Commission Delegated Regulation (EU) 2015/61 with regard to credit institutions established in different Member States, the ECB will take into account whether the criteria provided under Commission Delegated Regulation (EU) 2017/1230[66], which specify the conditions of the legislative framework, are met.

11. ADDITIONAL COLLATERAL OUTFLOWS FROM DOWNGRADE TRIGGERS (Article 30(2) of Commission Delegated Regulation (EU) 2015/61)

The ECB would expect that credit institutions calculate the amount of collateral that would be posted for, or contractual cash outflows associated with, contracts whose contractual conditions will lead to outflows within 30 calendar days in the case of a

[66] Delegated Regulation (EU) 2017/1230 of 31 May 2017 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the additional objective criteria for the application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme (OJ L 177, 8.7.2017, p. 7).

downgrade in the credit institution's external credit assessment by three notches. When credit institutions do not have an external credit assessment, it is expected that they will consider the impact on their liquidity outflows of a material deterioration of their credit quality corresponding to a three-notch downgrade. Where the above amount represents at least 1% of gross liquidity outflows, it is expected that such outflows are included in the regular supervisory reporting in accordance with Article 415 of the CRR. For the purpose of this specification, gross liquidity outflows should be understood as total liquidity outflows referred to in Article 22 of Delegated Regulation (EU) 2015/61, including those additional outflows triggered by the above-mentioned deterioration in credit quality.

12. CAP ON INFLOWS (Article 33(2) of Commission Delegated Regulation (EU) 2015/61)

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 a waiver under Article 8 of the CRR (i.e. where, in the case that the above-mentioned options are combined, the liquidity buffer requirement for the exempted credit institution is reduced to zero, or close to zero), while the two exemptions are subject to different specifications.

Consequently, in exercising the combination of those options and granting the related waivers, the ECB will make sure that this does not create any inconsistencies or conflicts with the ECB policy for granting a waiver in accordance with Article 8 of the CRR concerning the same entities within the same perimeter.

Details on the combination of the Article 33(2) exemption and the Article 34 waiver and their interaction with a waiver under Article 8 of the CRR are provided below in the specifications for the assessment of the inflows referred to in Article 33(2), point (a).

In general, the ECB considers that the cap on inflows set out in Article 33(1) of Commission Delegated Regulation (EU) 2015/61 can be fully or partially waived following a specific assessment of the applications submitted by credit institutions pursuant to Article 33(2) of the same Regulation. This assessment will be carried out according to the factors specified below for each type of exposure.

- **Assessment for granting the exemption from the cap on inflows under Article 33(2), point (a), of Commission Delegated Regulation (EU) 2015/61**

The provision captures inflows where the provider is a parent or subsidiary of the credit institution or another subsidiary of the same parent or linked to the credit institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC[67]. In this context, parent should be understood as a parent undertaking,

[67] Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1).

as defined in Article 4(1), point (15), of the CRR, and subsidiary should be understood as defined in Article 4(1), point (16), of the CRR.

Both entities should also belong to the same scope of consolidation as defined in Article 18(1) of the CRR, unless they have a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.

The ECB intends to exempt only those credit institutions which currently have inflows exceeding 75% of their gross outflows, or which reasonably expect to have inflows exceeding 75% of their gross outflows in the foreseeable future, also taking into consideration the potential volatility of the LCR.

(1) The ECB will pay particular attention to cases where this option is exercised in combination with the option set out in Article 34 of Commission Delegated Regulation (EU) 2015/61, when a preferential treatment for intragroup credit and liquidity facilities has been granted.

    Exercising these two options in combination could result in zero net liquidity outflows for the liquidity-receiving entity. It could, therefore, under certain conditions, have an effect for the liquidity-receiving entity that is comparable to a waiver in accordance with Article 8 of the CRR. In this regard, the ECB should ensure that granting applications for a combination of these two options or for the exemption under Article 33(2), point (a), of Commission Delegated Regulation (EU) 2015/61 in isolation does not conflict with the approved policy for applications for a waiver, under Article 8 of the CRR, which would cover the same entities.

    In cases where the conditions for a waiver in accordance with Article 8 of the CRR cannot be met for reasons that are not under the control of the credit institution or the group, or where the ECB is not satisfied that a waiver in accordance with Article 8 of the CRR may actually be granted, the ECB 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 from the cap on inflows pursuant to Article 33(2), point (a), of Commission Delegated Regulation (EU) 2015/61.

(2) The ECB considers it appropriate, in cases where applications are submitted jointly pursuant to Articles 33(2), point (a), and 34 of Commission Delegated Regulation (EU) 2015/61 for the same inflows, that the assessment regarding inflows from undrawn credit and liquidity facilities is carried out according to the specifications under Article 34 of Commission Delegated Regulation (EU) 2015/61 in order to ensure consistency.

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 the same Regulation, the ECB will consider the potential impact of this exemption on the LCR of the credit institution and its liquidity buffer, and the type of intragroup inflows that would be exempted from the cap on inflows. In particular, the ECB recognises that, under certain conditions, granting this exemption in isolation

could have a similar impact to a waiver granted in accordance with Article 8 of the CRR for the credit institution exempted from the cap on inflows.

The inflows in question should, therefore, meet minimum characteristics that would give sufficient comfort to the ECB that the applicant credit institution could rely on the inflows for its liquidity needs in times of stress. To this end, the ECB considers that the inflows should present the following features.

(i) There are no contractual clauses that require any specific conditions to be met for the inflow to become available.

(ii) There are no provisions that would allow the intragroup counterparty providing the inflows to withdraw from its contractual obligations or impose additional conditions.

(iii) The terms of the contractual agreement giving rise to the inflows cannot be changed substantially without the prior approval of the ECB. An extension or a renewal of contracts under the same provisions as previous contracts does not per se require prior approval. Nonetheless, extensions or renewals of contracts must be notified to the ECB.

(iv) The inflows are subject to a symmetric or more conservative outflow rate when the intragroup counterparty calculates its own LCR. In particular, for intragroup deposits, if the deposit-receiving credit institution applies an inflow rate of 100%, the applicant entity should demonstrate that the intragroup counterparty does not treat this deposit as operational (as defined in Article 27 of Commission Delegated Regulation (EU) 2015/61).

(v) The applicant credit institution is able to demonstrate that the inflows are also properly captured in the contingency funding plan of the intragroup counterparty or, in the absence of such contingency funding plan, in the contingency funding plan for the applicant credit institution.

(vi) The applicant credit institution should be able to demonstrate that the intragroup counterparty has been fulfilling the LCR requirement for at least one year.

(vii) The applicant credit institution should monitor the liquidity position of the intragroup counterparty on a regular basis and demonstrate that it also enables the intragroup counterparty to monitor its own liquidity position on a regular basis. Alternatively, it is expected that the applicant credit institution demonstrates how it has access to the appropriate information on the liquidity positions of the intragroup counterparty.

(viii) The applicant credit institution should be able to factor in the impact of granting the exemption on its risk management systems with a view to complying with Article 86 of the CRD and should also be able to monitor how a potential withdrawal of the exemption would affect its liquidity risk position and LCR.

- **Assessment for granting the exemption from the cap on inflows under Article 33(2), point (b), of Commission Delegated Regulation (EU) 2015/61**

It must be borne in mind that for members of IPSs this exemption could, under certain circumstances, be functionally equivalent, for the depositing entity (depositor) member of the IPS, to the deposit being treated in accordance with Article 16(1), point (a), of Commission Delegated Regulation (EU) 2015/61 as a Level 1 liquid asset. Even if the treatment under Article 16(1), point (a), concerns the LCR numerator, allowing an exemption from the cap on inflows pursuant to Article 33(2), point (b), for the deposit would, through the offsetting of outflows by inflows, decrease the denominator of the same ratio to a corresponding degree. This would ultimately produce an equivalent effect to the same deposit being recognised in full as HQLA and would increase the numerator. Consequently, the ECB is of the opinion that the exemption from the cap on inflows should not be exercised for deposits from entities (members of IPSs) qualifying for the treatment set out in Article 113(7) of the CRR that are fully eligible for the treatment pursuant to Article 16(1), point (a), of Commission Delegated Regulation (EU) 2015/61.

This being the case, credit institutions are invited (encouraged) to directly apply the treatment set out in Article 16(1), point (a), of Commission Delegated Regulation (EU) 2015/61 for the determination of the LCR.

Other deposits that do not qualify for the treatment under Article 16(1), point (a), of Commission Delegated Regulation (EU) 2015/61 could benefit from the exemption only in the following cases:

(1) where, in accordance with national law or the legally binding provisions, the deposit-receiving entity is obliged to hold or invest the deposits in Level 1 liquid assets as defined in Article 10(1), points (a) to (d), of Commission Delegated Regulation (EU) 2015/61;

or

(2) where the following conditions are met.

(i) There are no contractual clauses that require any specific conditions to be met for the inflow to become available.

(ii) There are no provisions that would allow the intra-IPS counterparty to not fulfil its contractual obligations or to impose additional conditions on the withdrawal of the deposit.

(iii) The terms of the contractual agreement governing the deposit cannot be changed substantially without the prior approval of the ECB.

(iv) The inflows are subject to a symmetric or more conservative outflow rate when the intra-IPS counterparty calculates its own LCR. In particular, if the deposit-receiving credit institution applies an inflow rate of 100%, the applicant entity should demonstrate that the intra-IPS counterparty does

not treat this deposit as operational (as defined in Article 27 of Commission Delegated Regulation (EU) 2015/61).

(v) The inflows are also properly captured in the contingency funding plan of the intra-IPS counterparty.

(vi) The applicant credit institution is able to demonstrate that the intra-IPS counterparty has been fulfilling the LCR requirement for at least one year.

(vii) The IPS adequately monitors and reviews the liquidity risk and communicates the review to individual members in terms of its systems in accordance with Article 113(7), points (c) and (d), of the CRR.

(viii) The applicant credit institution is able to incorporate the impact of granting the exemption in its risk management systems and monitor how a potential withdrawal of the exemption would affect its liquidity risk position and its LCR.

The legislative wording used for the other category of deposits eligible for exemption from the cap, namely groups of entities qualifying for the treatment set out in Article 113(6) of the CRR, means that the conditions mentioned in Article 113(6) of the CRR must have been met and the corresponding exemption from risk-weighted capital requirements for intragroup exposures must actually have been granted. Therefore, entities that have been excluded from the scope of prudential consolidation in accordance with Article 19 of the CRR should also be excluded from the application of the exemption on the cap on inflows, given that an exemption as referred to under Article 113(6) of the CRR cannot be granted. Consequently, the exemption from the cap on inflows under Article 33(2), point (b), of Commission Delegated Regulation (EU) 2015/61 is not allowed either.

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 HQLA as defined in Article 10(1), points (a) to (d), of Commission Delegated Regulation (EU) 2015/61.

- **Assessment for granting the exemption from the cap on inflows under Article 33(2), point c, of Commission Delegated Regulation (EU) 2015/61**

The ECB is of the opinion that inflows already benefiting from the preferential treatment mentioned in Article 26 of Commission Delegated Regulation (EU) 2015/61 should also be exempted from the cap referred to in Article 33(1) of Commission Delegated Regulation (EU) 2015/61.

In order to grant the exemption for the inflows referred to in the second sub-paragraph of Article 31(9) of Commission Delegated Regulation (EU) 2015/61, the ECB intends to assess such inflows against the definition of promotional loans in Article 31(9) of Commission Delegated Regulation (EU) 2015/61, and against the criteria of Article 26 of Commission Delegated Regulation (EU) 2015/61.

13. SPECIALISED CREDIT INSTITUTIONS (Article 33(3) to (5) of Commission Delegated Regulation (EU) 2015/61)

The ECB considers it appropriate that specialised credit institutions should have differentiated treatment for the recognition of their inflows under the conditions specified in Article 33(3) to (5) of Commission Delegated Regulation (EU) 2015/61.

More specifically:

(i) credit institutions whose main activities are leasing and factoring can be fully exempted from the cap on inflows;

(ii) credit institutions whose main activities are financing for the acquisition of motor vehicles and consumer credit as defined in Directive 2008/48/EC of the European Parliament and of the Council[68] may apply a higher cap of 90% on inflows.

The ECB considers that only credit institutions with a business model that fully corresponds to one or several of the activities identified in Article 33(3) and (4) of Commission Delegated Regulation (EU) 2015/61 can expect preferential treatment.

For the purpose of this assessment, the ECB would also examine whether the business activities exhibit a low liquidity risk profile, taking into account the following factors.

(i) The timing of inflows should match the timing of outflows. More specifically, the ECB would examine whether the following apply.

(a) Inflows and outflows subject to the cap exemption or to a 90% cap are triggered by a single decision or set of decisions by a given number of counterparties and are not subject to a judgement or discretionary decision of the reporting credit institution.

(b) Inflows and outflows subject to the exemption are related to a legal, regulatory or contractual commitment. This commitment has to be evidenced by the applicant credit institution. In the event that the exempted inflow arises from a contractual commitment, it is expected that the credit institution shows that this commitment has a residual validity exceeding 30 days. Alternatively, when the business activity does not make it possible to show a relationship between inflows and outflows on a transaction-by-transaction basis, the applicant credit institutions should provide maturity ladders showing the respective timing of inflows and outflows over a period of 30 days for a total period covering at least one year.

(ii) At the individual level, the credit institution is not significantly financed by retail deposits. More specifically, the ECB would examine whether deposits from retail depositors exceed 5% of its total liabilities, and whether at the

[68] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

individual level the ratio of the main activities of the credit institution exceeds 80% of the total balance sheet. In cases where at the individual level credit institutions have diversified business activities which include one or several of the activities identified in Article 33(3) or (4) of Commission Delegated Regulation (EU) 2015/61, only inflows corresponding to activities under Article 33(4) are considered to be subject to the 90% cap. Within this context, the ECB would also examine whether the credit institution's activities under Article 33(3) and (4), jointly examined, exceed 80% of the total balance sheet of the credit institution at the individual level. It is expected that the institution demonstrates that it has an appropriate reporting system to precisely identify these inflows and outflows on a continuous basis.

(iii) The derogations are disclosed in annual reports.

In addition, the ECB would examine whether, at the consolidated level, inflows exempt from the cap are higher than outflows arising from the same specialised credit institution and cannot be used to cover any other types of outflows.

14. INTRAGROUP LIQUIDITY INFLOWS (Article 34 of Commission Delegated Regulation (EU) 2015/61)

- **General conditions**

The ECB would also allow for differentiated treatment with regard to inflows within a group, under the conditions set out in Article 425 of the CRR and Article 34 of Commission Delegated Regulation (EU) 2015/61, after a case-by-case assessment. This approach would be considered for inflows of credit and liquidity facilities, in cases where waivers of Article 8 or 10 of the CRR were not granted or were partially granted, with regard to the LCR. This policy applies both for institutions established within the same Member State and for credit institutions established in different Member States.

For the purpose of this assessment pursuant to Article 425(4) of the CRR and Article 34(1) of Commission Delegated Regulation (EU) 2015/61, with regard to credit institutions established in the same Member State, the ECB will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

(i) In order to assess whether there are reasons to expect a higher inflow even under a combined idiosyncratic and market-wide stress scenario, the ECB expects that it will be shown that cancellation clauses include a notification period of at least six months and that the agreements and commitments do not contain any clause that would allow the liquidity provider to:

(a) require any conditions to be fulfilled before the liquidity is provided;

(b) withdraw from its obligations to fulfil these agreements and commitments;

(c) change substantially the terms of the agreements and commitments without prior approval from the competent authorities involved.

(ii) In order to assess whether a corresponding symmetric or more conservative outflow is applied by the counterparty by way of derogation from Articles 422, 423 and 424 of the CRR, the ECB expects that it will be shown that the corresponding outflows from the credit or liquidity facility are taken into account in the liquidity recovery plan of the liquidity-providing entity.

(iii) In order to assess whether the liquidity-providing entity exhibits a sound liquidity profile, it is expected that the credit institution demonstrates that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year. It is expected that the liquidity-receiving entity reflects the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR.

- **Additional conditions in the case of an application where the counterparty is located in a different Member State than the applicant credit institution**

For the purpose of this assessment pursuant to Article 425(5) of the CRR and Article 34(1) to (3) of Commission Delegated Regulation (EU) 2015/61, with regard to credit institutions established in different Member States, the ECB will take into account whether the criteria provided for in Commission Delegated Regulation (EU) 2017/1230, which specify the conditions of the legislative framework, are met.

15. RESTRICTION OF CURRENCY MISMATCHES (Article 428b(5) of the CRR)

The first paragraph of Article 428b(5) of the CRR, according to which credit institutions must ensure that the distribution of their funding profile by currency denomination is generally consistent with the distribution of their assets by currency, does not require credit institutions to comply with a 100% NSFR in relation to the NSFR in significant currencies (as defined in Article 415(2) of the CRR). Instead, the ECB will assess potential mismatches against the factors referred to under points (a) and (b) of Article 428b(5) of the CRR. Based on this assessment, the ECB may then impose a limit on the proportion of required stable funding in a particular currency that can be met by available stable funding that is not denominated in that currency on a case-by-case basis, if deemed necessary.

This is notwithstanding the fact that the ECB will also monitor risks related to currency mismatches of assets and liabilities more generally by also looking at those currency mismatches of assets and liabilities with an effective residual maturity beyond the one-year time horizon referred to in the NSFR.

16. INTERDEPENDENT ASSETS AND LIABILITIES (Article 428f(1) of the CRR)

In the context of Article 428f(1) of the CRR, the ECB intends to allow credit institutions to treat an asset and a liability as interdependent on a case-by-case basis

and provided that the following criteria, which specify the conditions of the legislative framework, are met.

(1) With regard to Article 428f(1), points (a) to (c) and (f), of the CRR, it is expected that the applicant credit institution provides a comprehensive description of the underlying assets and liabilities which will be treated as interdependent as well as the counterparties involved. The description should demonstrate that:

(i) the credit institution acts solely as a pass-through unit to channel funding from the liability into the corresponding asset;

(ii) the individual interdependent assets and liabilities are clearly identifiable and have the same principal amount;

(iii) the asset and interdependent liability have substantially matched maturities, with a maximum delay of 20 days between the maturity of the asset and the maturity of the liability;

(iv) the counterparties for each pair of interdependent assets and liabilities are not the same.

(2) With regard to Article 428f(1), points (d) and (e), of the CRR, it is expected that the credit institution provides a legal opinion, issued either by an external independent third party or by an internal legal department, and approved by the management body, which confirms that the contractual arrangements and the legal and regulatory framework ensure that the interdependent liability cannot be used to fund other assets and that flows from the asset cannot be used for purposes other than repaying the interdependent liability.

It is expected that the credit institution submits to the ECB ex ante information about (i) the outstanding balance of the assets and liabilities which would be treated as interdependent and (ii) the impact on the NSFR if the ECB were to allow the credit institution to treat an asset and a liability as interdependent.

17. PREFERENTIAL TREATMENT WITHIN A GROUP OR AN IPS (Article 428h of the CRR)

The ECB intends to allow credit institutions to apply a higher available stable funding factor or a lower required stable funding factor to assets, liabilities and committed credit or liquidity facilities pursuant to Article 428h of the CRR on a case-by-case basis and provided that the following criteria, which specify the conditions of the legislative framework, are met.

- **General conditions**

(1) It is expected that the credit institution provides the following.

(i) The name of the entity which is the counterparty to the transaction; information on the relevant asset, liability or committed credit or liquidity facility which will benefit from the preferential treatment; and the NSFR of

the credit institution and of the counterparty should the preferential treatment be granted.

(ii) Where an application is made before 28 June 2021 and where the credit institution or the counterparty does not yet have an NSFR of at least 100%, a description of the plans to achieve compliance, including in the situation where the preferential treatment is not granted. The ECB will assess whether these plans are reliable, also in view of the specific business model of the credit institution.

(2) With respect to the requirement laid down in Article 428h(1), point (a), of the CRR specifying the counterparty to the transaction for which a preferential treatment may be applied, credit institutions should consider the following.

(i) Where Article 428h(1), points (a)(i) or (ii), of the CRR applies, the parent should be understood as a parent undertaking as defined in Article 4(1), point (15), of the CRR and subsidiary should be understood as defined in Article 4(1), point (16), of the CRR. In those cases, the credit institution and the counterparty should belong to the same scope of consolidation as defined in Article 18(1) of the CRR.

(ii) Where Article 428h(1), points (a)(iv) or (v), of the CRR applies, a preferential treatment may only be granted where the conditions referred to in Article 113(7) have been met or where credit institutions and counterparties are situated in the same Member State and are permanently affiliated to a central body which supervises them and which is established in the same Member State, as referred to in Article 10 of the CRR. Moreover, in those cases, the ECB does not intend to apply the preferential treatment to deposits referred to in Article 428g of the CRR, which already receive a dedicated treatment of being recognised as liquid assets pursuant to the Commission Delegated Regulation (EU) 2015/61.

(3) With respect to the requirement laid down in Article 428h(1), point (b), of the CRR, where the credit institution would like to apply a higher available stable funding factor to a committed credit or liquidity facility granted to the credit institution by a counterparty referred to in Article 428h(1), point (a), of the CRR, the ECB expects that it will be shown that cancellation clauses for the contracts include a notification period of at least 18 months and that the agreements and commitments do not contain any clause that would allow the funding provider to:

(i) require any conditions to be fulfilled before the funding is provided;

(ii) withdraw from its obligations to fulfil these agreements and commitments;

(iii) change substantially the terms of agreements and commitments without prior approval from the ECB.

(4) With respect to the requirement laid down in Article 428h(1), point (c), of the CRR, the credit institution should demonstrate the following:

(i) where the credit institution would like to apply a higher available stable funding factor to a committed credit or liquidity facility received from a counterparty referred to in Article 428h(1), point (a), of the CRR, the corresponding outflows that could arise from the relevant facility are taken into account in the liquidity recovery plan and contingency funding plan of the counterparty;

(ii) where the credit institution would like to apply a lower required stable funding factor to a committed credit or liquidity facility granted to a counterparty referred to in Article 428h(1), point (a), of the CRR, the inflows that could potentially arise from the relevant facility are taken into account in the liquidity recovery plan and contingency funding plan of the counterparty.

Where the credit institution has received funding or may receive it by drawing upon committed credit or liquidity facilities granted by a counterparty referred to in Article 428h(1), point (a), of the CRR, the credit institution may be authorised to apply a higher available stable funding factor up to the required stable funding factor applied by the counterparty. Where the credit institution has provided funding or has granted committed credit or liquidity facilities to a counterparty referred to in Article 428h(1), point (a), of the CRR, the credit institution may be authorised to apply a lower required stable funding factor that should be at least equal to the available stable funding factor applied by the counterparty.

- **Additional conditions in the case of an application where the counterparty is located in a different Member State than the applicant credit institution**

For the purpose of the assessment pursuant to Article 428h(2) of the CRR with regard to credit institutions established in different Member States, the ECB will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

(1) With respect to the requirement laid down in Article 428h(2), point (a), of the CRR, the credit institution should demonstrate to the ECB that any application for preferential treatment is supported by a reasoned and formalised decision of the management bodies of both the credit institution and the counterparty, ensuring that they fully understand the implications of the preferential treatment in the event that it is granted and that cancellation clauses include a notification period of at least 18 months.

(2) With respect to the requirement laid down in Article 428h(2), point (b), of the CRR, the credit institution should demonstrate that:

(i) where the NSFR requirement has been applicable under the legislation in place for a full year, the funding provider has been fulfilling the NSFR on an individual basis, when applicable, for at least one year;

(ii) where the NSFR requirement has been not been applicable under the legislation in place for a full year, the funding provider has a sound funding position, which would be considered to have been achieved if the liquidity

and funding management of the funding provider evaluated in the SREP is deemed to be of high quality.

(3) With respect to the requirement laid down in Article 428h(2), point (c), of the CRR, the credit institution should demonstrate to the ECB that the funding provider monitors on a regular basis the funding position of the recipient of the funding.

18. APPLICATION OF THE SIMPLIFIED NET STABLE FUNDING REQUIREMENT (Article 428ai of the CRR)

The ECB intends to permit, upon application, small and non-complex institutions defined under Article 4(145) of the CRR to apply the simplified net stable funding requirement as referred to in Part Six, Title IV, Chapter 5 of the CRR. Where the applicant institution belongs to a group with an EU parent institution that does not meet the definition of a small and non-complex institution defined under Article 4(145) of the CRR, the ECB intends to permit the applicant institution to apply the simplified net stable funding requirement only where there is no evidence that such application would prevent the group from complying with the net stable funding requirement as defined under Part Six, Title IV, Chapter 1 of the CRR at the consolidated level.

Chapter 7
Leverage

1. This chapter sets out the ECB's policy regarding leverage.

2. Part Seven of the CRR sets out the relevant legislative framework.

3. TREATMENT OF UNITS WITHIN CREDIT INSTITUTIONS AS PUBLIC DEVELOPMENT CREDIT INSTITUTIONS IN THE CALCULATION OF THE LEVERAGE RATIO (Article 429a(2) of the CRR).

In the exercise of the discretion provided for in Article 429a(2) of the CRR, the ECB will assess applications from credit institutions taking into account the specific aspects highlighted below in order to ensure a prudent implementation of the relevant regulatory framework.

In particular, the assessment aims to ensure that the conditions of Article 429a(2) of the CRR are fulfilled and that a preferential treatment for the units within credit institutions does not affect the effectiveness of supervision.

To these ends, the ECB will verify at least the following factors.

(1) The unit within the credit institution has been established by a Member State's central government, regional government or local authority. To demonstrate that this condition is fulfilled, the applicant credit institution should refer to a law or executive decision by a Member State's central government, regional

government or local authority through which the unit has been established or a European Commission State aid decision.

(2) The activity of the unit is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws and provisions governing that credit institution, including articles of association, on a non-competitive basis. The goal of the unit is not to maximise profit or market share. To demonstrate that these conditions are fulfilled, in addition to its articles of association, the applicant credit institution should provide a full overview of the assets and liabilities originated by the unit and a description of the client services provided by the unit. In addition, the applicant credit institution should provide information about the remuneration policies in place for the staff in charge of the assets and liabilities of the unit. This documentation should provide evidence that the activities of the unit are limited as set out in the first sentence and that either the pricing of the assets, liabilities and services is performed on a non-competitive basis or the activities are aimed at covering a market shortfall recognised by a European Commission State aid decision.

(3) Subject to Union State aid rules, the central government, regional government or local authority has an obligation to protect the viability of the unit or credit institution, or directly or indirectly guarantees at least 90% of the credit institution's own funds requirements, funding requirements or promotional loans granted. To demonstrate compliance with this condition, the applicant credit institution should provide to the ECB an effective law or legally enforceable protection arrangement which clearly sets out the obligations of a central government, regional government or local authority. This documentation should be supplemented by a legal opinion issued either by an external independent third party or by an internal legal department, approved by the management body of the parent undertaking, confirming the effectiveness of the protection or of the guarantee arrangements.

(4) The unit does not take covered deposits, as defined in Article 2(1), point (5), of the DGS Directive or in national law implementing that Directive, that may be classified as fixed-term or savings deposits from consumers as defined in Article 3, point (a), of Directive 2008/48/EC of the European Parliament and of the Council.

(5) The unit is organisationally, structurally and financially independent and autonomous. To demonstrate the organisational autonomy of the unit, the applicant credit institution should submit to the ECB an organisation chart confirming that the unit has its own staff and management which report directly to the highest management body of the applicant credit institution as well as any document supporting the ability of the unit to establish its own governance arrangements (e.g. the statutes of the credit institution). The ECB considers structural independence to be in place when the assets and liabilities originated by the unit are individually identifiable and separated from the other assets and liabilities of the credit institution (e.g. the unit publishes its own financial reports and has its own credit rating). To demonstrate financial independence, the applicant credit institution should provide evidence that the unit's exposures are

funded by external sources, i.e. the unit does not rely on cross-financing from other parts of the group.

Where a credit institution receives permission from the ECB to treat a unit as a public development credit institution, the credit institution should, on an ongoing basis, ensure that the ECB receives the most up-to-date versions of the documentation referred to in points (1) to (5) above in order to facilitate the ECB's annual review of the decision. Credit institutions should consider an ECB decision granting the preferential treatment of Article 429a(2) of the CRR as applicable until the decision is revoked by the ECB.

4. PREFERENTIAL TREATMENT FOR NOTIONAL CASH POOLING ARRANGEMENTS (Article 429b(3) of the CRR)

Credit institutions should notify the ECB if they intend to apply the preferential treatment for cash pooling set out in Article 429b(3) of the CRR. The notification to the ECB should be made to the relevant JST and include a detailed description of the cash pooling product, including details about the frequency of transfers from the original accounts to the separate single account and a self-assessment of compliance with the conditions of Article 429b(3) of the CRR.

Chapter 8
Reporting on prudential requirements and financial information

1. WAIVER FROM REPORTING REQUIREMENTS FOR DUPLICATIVE DATA POINTS (Article 430(11) of the CRR)

Article 430(11) of the CRR permits competent authorities to waive the requirement to submit any of the data points set out in the reporting templates specified in the implementing technical standards referred to in Article 430 of the CRR where those data points are duplicative. In order to be waived, duplicate data points need to be identical in terms of, for example, definition, scope of consolidation, metrics, and accounting rules. The ECB intends to consider and approve a waiver whenever its use is duly justified, but expects duplicative reporting to be very rare given the maximum harmonisation principle applied to supervisory reporting. Against this background, the ECB expects that the necessity to make use of the waiver provided for in Article 430(11) of the CRR will also be very rare.

Chapter 9
General requirements for access to the activity of credit institutions

1. WAIVER FOR CREDIT INSTITUTIONS PERMANENTLY AFFILIATED TO A CENTRAL BODY (Article 21(1) of the CRD)

2. Credit institutions permanently affiliated to a central body, as described in Article 10 of the CRR, will not be required to meet the authorisation requirements set out in national law implementing Articles 10 and 12 and Article 13(1) of the CRD, provided that the ECB deems that the conditions set out in Article 10(1) of the CRR are fulfilled.

3. DISCRETION TO ALLOW A THIRD-COUNTRY GROUP TO HAVE TWO INTERMEDIATE EU PARENT UNDERTAKINGS IN THE EU (Article 21b(2) of the CRD)

   The ECB will consider allowing, on a case-by-case basis, a third-country group (TCG) to have two EU intermediate parent undertakings (IPUs) in the EU after considering, as applicable, both possible justifications referred to in the CRD:

   (1) in the case that the TCG is subject to a mandatory requirement for separation of activities – either by virtue of generally applicable rules in the third country where the ultimate parent undertaking of the TCG has its head office, or by virtue of a supervisory decision by a supervisory authority in that third country – an assessment by that third country's supervisory authority which is responsible for ensuring compliance with such rules or for taking such decision;

   (2) the assessment of the competent resolution authority of the EU IPU regarding the impact on the efficiency of resolvability of a structure with two IPUs.

   Since 29 December 2020, institutions have had to comply with the single IPU requirement as soon as the IPU threshold is reached and thus need to apply for all supervisory procedures sufficiently far in advance.

   In line with the EBA Opinion[69] on the set-up and operationalisation of the IPU(s), in order to ensure that the approval of two IPUs is subject to an appropriate assessment, it should be subject to an ad hoc application to be jointly submitted by all credit institutions and investment firms in the Union belonging to the TCG with the support of the parent undertaking in the third country.[70]

   The application should be addressed to the consolidating supervisor in all cases. In the absence of a consolidating supervisor for all the credit institutions and investment firms in the Union, the competent authority for the receipt of the application should be identified in line with the criterion laid down in the EBA Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of Directive 2013/36/EU[71] relating to the obligation of the EU parent institutions and stand-alone institutions to alert the consolidating supervisor that the €40 billion threshold has been met or will be met based on the forward-looking approach.

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69 Opinion of the European Banking Authority on the set-up and operationalisation of Intermediate EU Parent Undertaking(s) under Article 21b CRD (EBA/Op/2022/12).

70 See paragraph 19 of EBA/Op/2022/12.

71 Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of Directive 2013/36/EU (EBA/GL/2021/08).

Where the application is based, solely or jointly, on a mandatory requirement of separation of activities to which the TCG is subject in the third country (Article 21b(2), point (a), of the CRD), the ECB expects that the applicant provides a detailed description of the applicable third-country regime, the operational structure and the envisaged allocation of the activities to each IPU in line with the third-country regime.

It is expected that additional relevant information and documents supporting the application include as a minimum the following:

(i) a well-reasoned explanation as to why the conditions of Article 21b(2), points (a) and (b), of the CRD, as applicable, are considered fulfilled;

(ii) reliable evidence of the application of the third-country mandatory regime on segregation of activities to the TCG (e.g. a decision of the third-country home authority or public disclosure by the third-country parent undertaking);

(iii) the current structure of the respective group in the light of the mandatory separation requirement applied in the third country, including a description of the activities that are carried out in the separate group chains and interlinkages between the two separate arms of the group;

(iv) the application for any waiver of the mandatory separation requirement filed by the TCG with the third-country home authority and the detailed explanation as to any exception that has been granted by such third-country home authority;

(v) the location and types of undertakings envisaged as IPUs;

(vi) a business plan for the two IPUs with a least a three-year time horizon, laying down a description of the foreseen EU TCG structure under the two IPUs, the types and volumes of activities that each group intends to perform and the extent of its alignment with the overall TCG structure;

(vii) the timeline, with an indication of clear milestones showing how the group can ensure that the IPUs will be operational when the IPU threshold is reached;

(viii) descriptions of both the interlinkages between structurally separated entities, including at the level of the management bodies of the two entities, and the decision-making processes relating to strategic decisions;

(ix) confirmation, ideally from the third-country home authority, that the two-IPU structure as envisaged – including the described interlinkages – would be compliant with the applicable third-country framework.

The ECB may require additional information on an ad hoc basis.

The second IPU should be set up for the purpose of allowing the relevant TCG to continue providing services subject to structural separation (“segregated services”). This means that the second IPU – and the institutions in its group – should only

perform services that are segregated from the activities of the first IPU, following the requirements of the supervisory authorities of the third country related to the separation rules and taking into account the overall structure of the TCG. The two IPUs should be stand-alone operating entities with adequate independent governance structures, risk management capabilities and staffing.

If the application is based on Article 21b(2), point (b), either solely or jointly with Article 21b(2), point (a), the resolution authority will be competent for the assessment of the grounds under Article 21b(2), point (b), of the CRD. When the ECB acts as consolidating supervisor, it will take the assessment of the resolution authority into account when adopting its decision on the application for two IPUs.

More details can also be found in the ECB FAQ on the IPU requirement.[72]

[72] See "FAQs on the intermediate EU parent undertaking requirement".

Chapter 11
Governance arrangements and prudential supervision

1. This chapter sets out the ECB's policy on specific provisions related to governance arrangements and the prudential supervision of credit institutions.

2. The relevant legislative and regulatory framework is set out in Title VII of the CRD (and the national implementations of the provisions included in that Title) and the applicable EBA Guidelines.

3. COMBINING THE RISK COMMITTEE AND THE AUDIT COMMITTEE (Article 76(3) of the CRD)

   The ECB considers that all significant supervised groups should have a separate risk and audit committee at the level of the parent undertaking, or the highest level of consolidation within the participating Member States. At the subsidiary level, the ECB considers that a non-significant institution within the meaning of Article 76(3) of the CRD can combine the risk committee with the audit committee. For this purpose, it should be noted that the designation of an institution as non-significant pursuant to Article 76(3) is different from the classification of a credit institution as a significant supervised entity under Article 6 of the SSM Regulation. The categorisation will be assessed by the ECB on a case-by-case basis.

   For the purposes of this assessment and for the sole purpose of applying Article 76(3), a credit institution would be considered as significant by the ECB within the meaning of that Article if at least one of the following aspects is present:

   (i) the assets of the credit institution, calculated on either an individual or a consolidated basis, are equal to, or exceed, €5 billion;

   (ii) the credit institution has been identified as an "other systemically important institution" (O-SII);

   (iii) the resolution authority has identified critical functions or critical shared services and it envisages the application of resolution tools to the credit institution, instead of orderly liquidation;

   (iv) the credit institution has issued transferable shares listed on a regulated market;

   (v) the internal organisation as well as the nature, scope and complexity of the activities of the credit institution would justify its classification as a significant institution within the meaning of Article 76(3).

4. ADDITIONAL NON-EXECUTIVE DIRECTORSHIP (Article 91(6) of the CRD)

   The ECB intends to authorise, on a case-by-case basis, members of the management body of a credit institution to hold one additional non-executive directorship, in accordance with Article 91(6) of the CRD.

For the purpose of this assessment, the ECB would examine whether the following criteria, specifying the conditions of the legislative framework, are met:

(i) whether the person holds a full-time occupation or an executive mandate;

(ii) whether the person holds any additional responsibilities such as membership of committees (e.g. the person is Chair of the audit, risk, remuneration or nominations committee in a supervised entity);

(iii) whether the company is regulated or listed, the nature of its business activities or cross-border business activities, internal group structures and whether or not there are synergies;

(iv) whether the person already benefits from the privileged counting of directorships;

(v) whether the mandate is temporary only, i.e. for less than the duration of one whole term;

(vi) whether the person's experience of the management body or the company is such that he or she could carry out duties with greater familiarity and hence efficiency.

5. INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS FOR CREDIT INSTITUTIONS PERMANENTLY AFFILIATED TO A CENTRAL BODY (Article 108(1) of the CRD)

Article 108(1), second sub-paragraph, of the CRD gives competent authorities the option to exempt credit institutions included in Article 10 of the CRR (affiliates and central body) from complying with the internal capital adequacy assessment process (ICAAP) requirements on a solo basis.

The ECB is inclined to grant such exemption in cases where a capital waiver pursuant to Article 10 of the CRR has already been granted for the credit institutions in question. For the specifications for granting a waiver pursuant to Article 10 of the CRR, please see Chapter 1.

6. DETERMINATION OF THE CONSOLIDATING SUPERVISOR (Article 111(6) of the CRD)

In certain cases, the ECB would consider it appropriate to agree that a competent authority of a non-participating Member State be designated as the consolidating supervisor or, alternatively, that the ECB take over as consolidating supervisor from another authority, as specified in Article 111(6) of the CRD and on a case-by-case basis.

7. BILATERAL AGREEMENT ON THE SUPERVISION OF CREDIT INSTITUTIONS IN NON-PARTICIPATING MEMBER STATES

Moreover, in cases where the ECB is the competent authority that has authorised a parent undertaking which is a credit institution, it would, by bilateral agreement with

the competent authority of the non-participating Member State, seek to assume responsibility for supervising the subsidiary credit institution authorised in that Member State through delegation of responsibilities from the competent authority of the subsidiary credit institution, in accordance with Article 115(2) of the CRD.

8. COOPERATION OBLIGATIONS (Articles 117 and 118 of the CRD)

Within the cooperation obligations of Articles 117 and 118 of the CRD, the ECB is keen to be able to check information concerning entities in other Member States and to participate in related checks, especially in cases where the national competent authority seeks to verify information, for example by means of an on-site inspection.

9. SUPERVISION OF MIXED FINANCIAL HOLDING COMPANIES (Article 120(1) and (2) of the CRD)

With respect to the supervision of mixed financial holding companies, the ECB, as the consolidating supervisor, would consider it appropriate to exclude them from the application of the CRD, under the condition that they are subject to equivalent supervision under the Financial Conglomerates Directive (FICOD)[73], particularly in terms of risk-based supervision. Conversely, the ECB would also consider it appropriate to include mixed financial holding companies in the application of those parts of the CRD relating to the banking sector, provided that this is the most significant financial sector in which these companies operate. The choice between the two approaches will be decided after a case-by-case assessment, taking into account the related delegated acts.

10. ESTABLISHMENT OF FINANCIAL HOLDING COMPANIES OR MIXED FINANCIAL HOLDING COMPANIES (Article 127(3) of the CRD)

In addition, for the purpose of applying prudential requirements on a consolidated basis, the ECB may consider it necessary to require, on a case-by-case basis, the establishment of a financial holding company or mixed financial holding company in the participating Member State pursuant to the SSM Regulation, under the conditions specified in Article 127(3) of the CRD and taking into account relevant delegated acts (Commission Implementing Decision of 12 December 2014[74] and any subsequent amendments).

11. CAPITAL CONSERVATION PLANS (Article 142 of the CRD)

Finally, the ECB intends to retain some flexibility with regard to the capital conservation plan to be submitted under Article 142 of the CRD. The ECB is of the view that additional information requests can prove useful, taking into account the individual situation of a bank and the content of the capital plan provided by the

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[73] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

[74] 2014/908/EU: Commission Implementing Decision of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 359, 16.12.2014, p. 155).

same credit institution. The ECB will decide on the time frame for rebuilding capital buffers or, where applicable, leverage ratio buffers, on a case-by-case basis; as a general rule, however, this time frame should not exceed a period of two years. Appropriate measures taken by the ECB of the types specified in Article 142(4) of the CRD and on the basis of Article 16(2) of the SSM Regulation are not excluded in cases where the ECB considers the plan to be insufficient to conserve or raise sufficient capital, so as to enable the institution to meet its combined buffer requirements or, where applicable, its leverage ratio buffer requirement within an appropriate period. In any case, a capital conservation plan should be submitted to the ECB, after the identification of the failure to meet a requirement, within the time limits set out in Article 142(1) of the CRD.

Section III
The ECB's general policy regarding the exercise of certain options and discretions in the CRR and the CRD where further action or assessment is required

This section provides the ECB's general stance with regard to the exercise of certain options and discretions where further action or assessment is required. Specific policy guidance, potentially including more detailed specifications, will be communicated on the basis of future regulatory developments or further assessment and, where appropriate, also in cooperation with the national competent authorities. The purpose of this section is to communicate the ECB's stance prior to the development of specific policies and specifications.

Chapter 1
Own funds

1. ELIGIBILITY OF CAPITAL INSTRUMENTS SUBSCRIBED BY PUBLIC AUTHORITIES IN EMERGENCY SITUATIONS (Article 31 of the CRR)

   In close and timely cooperation with the EBA, the ECB intends to assess the inclusion in Common Equity Tier 1 of capital instruments subscribed by public authorities in emergency situations in accordance with Article 31(1) of the CRR when future specific cases arise.

Chapter 2
Capital requirements

1. NETTING (MARKET RISK) (Article 327(2) of the CRR)

   The ECB intends to determine its policy and potentially develop specifications for exercising the option in Article 327(2) of the CRR in order to allow netting between a convertible and an offsetting position in the instrument underlying it, based on the EBA Guidelines to be issued pursuant to Article 327(2) of the CRR.

2. CALCULATION OF THE SERVICES COMPONENT FOR INSTITUTIONAL PROTECTION SCHEMES (OPERATIONAL RISK) (Article 314(5) of the CRR)

The ECB intends to determine its policy and potentially develop specifications[75] for exercising the option in Article 314(5) of the CRR in order to allow the calculation of the services component net of any income received from income or expenses paid to institutions which are members of the same IPS meeting the requirements of Article 113(7), based on the EBA draft RTS and Guidelines to be issued pursuant to Articles 314(9), 323(2), 317(9), and 317(10) of the CRR.

Chapter 3
Liquidity

1. MULTIPLIER FOR RETAIL DEPOSITS COVERED BY A DEPOSIT GUARANTEE SCHEME (Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61)

With regard to the discretion under Articles 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61, while the ECB remains generally supportive of it, finalisation of the ECB's policies is pending. In that regard, the ECB will carefully monitor related regulatory developments, including the extent to which deposit guarantee schemes in the euro area meet the conditions under Article 24(4) of Delegated Regulation (EU) 2015/61, as well as any emerging evidence that the outflow rates for stable retail deposits would be below 3% during any stress period experienced consistent with the scenarios referred to in Article 5 of Delegated Regulation (EU) 2015/61.

MULTIPLIER FOR RETAIL DEPOSITS COVERED BY A DEPOSIT GUARANTEE SCHEME (Article 24(6) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to authorise a credit institution to multiply by 3% the amount of deposits covered by a deposit guarantee scheme in a third country at the consolidated level, pursuant to Article 24(6) of Commission Delegated Regulation (EU) 2015/61, provided that:

(i) the ECB has authorised the credit institution to apply an outflow rate of 3% to stable retail deposits covered by a deposit guarantee scheme in accordance with the DGS Directive pursuant to Article 24(4) of Commission Delegated Regulation (EU) 2015/61;

(ii) the third country allows this treatment and the deposit guarantee scheme in the third country has been assessed as equivalent to the schemes listed in Article 24(1) of Commission Delegated Regulation (EU) 2015/61 and meets the conditions listed in Article 24(4), points (a) to (c), of Commission Delegated Regulation (EU) 2015/61.

[75] The specifications pertaining to what would be "suitable and uniformly stipulated systems for the monitoring and classification of operational risks" as well as the expectation regarding the "mutualisation across institutional protection scheme members".

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For specific terminology please refer to the SSM glossary (available in English only).