EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

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General comments

Template for comments

Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB Guide on Options and Discretions under Union law

Please enter all your feedback in this list.
When entering feedback, please make sure that:
- **each comment deals with a single issue only;**
- **you indicate the relevant article/chapter/paragraph, where appropriate;**
- **you indicate whether your comment is a proposed amendment, clarification or deletion.**

Deadline:	midnight CET on 30 August

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Explanatory Memo	23	Clarification	Further detail is sought regarding the range in which the RSF factor will be set for Central Bank reserves in third countries.	Whilst the aim of the ECB requiring a factor for the Required Central Bank reserves is understood, due to the high requirements of Required Central Bank reserves in some third countries, we ask that further detail be given about the range in which this factor will be set. The Article 428r of the CRR applies a general 0% required stable funding factor to all reserves held by the institution in the ECB or in the central bank of a Member State or the central bank of a third country, including required reserves and excess reserves. From our perspective, if a factor should be applied it would be aligned with the type of asset (as it is defined in the 2015/61 Regulation) that will be deposited in the ECB or in the central bank of a Member State or third country. Furthermore, in case most of the banks constitute these reserves with cash a 0% factor should apply. Conversely, if in some countries (such as, LATAM) these reserves could be constituted with other assets, the corresponding % factor should apply.	Akbar, Sahir	Publish
2	Explanatory Memo	27	Clarification	The policy guidance should indicate timelines on the ECB's goal to reconfirm institution's compliance with the relevant criteria, if the institutions have intragroup exposures to entities in third countries that are already fully exempted from the large exposure limit in accordance with Article 9(3) of the ECB Regulation.	Following the explanatory memorandum, “Credit institutions which have intragroup exposures to entities in third countries that are already fully exempted from the large exposure limit in accordance with Article 9(3) of the ECB Regulation would not be expected to submit applications for exemption of these exposures from the large exposures limit. Instead, the ECB would reconfirm institutions' compliance with the relevant criteria, taking into consideration the additional factors set out in the revised version of the ECB Guide, as appropriate, as part of its regular supervisory programme.” As such, it remains unclear whether compliance needs to be reconfirmed immediately following with the publication of the ECB guide or if a transitional period will enter into force and if so, how long that transitional period would be.	Akbar, Sahir	Publish
3	Explanatory Memo	27	Clarification	We welcome that the Explanatory Memorandum makes clear that Significant Institutions under ECB supervision do not have to submit applications under the new implementation of Article 400(2)(c) for existing use of the exemption for intra-group exposures to third-country entities. However it is not clear whether the same treatment also applies to LSIs which have intragroup exposures to entities in third countries that are already fully exempted in accordance with the existing national implementation of Article 400(2)(c) CRR1. While the introductory text in section 1.2 makes clear that for LSIs “…references to the ECB as the competent supervisory authority should be interpreted as implying a reference to the relevant NCA…”, some uncertainty remains as LSIs were not “exempted in accordance with Article 9(3) of the ECB Regulation”, but were exempted in accordance with national implementations of Article 400(2)(c) CRR. We would welcome for the text to be amended to clarify this point, eg as follows: “Credit institutions which have intragroup exposures to entities in third countries that are already fully exempted from the large exposure limit in accordance with Article 9(3) of the ECB Regulation ***or national implementation of article 400(2)(c)*** would not be expected to submit applications for exemption of these exposures from the large exposures limit.”	We would welcome for grandfathering to also apply to LSIs on exemptions for intra-group large exposures to third country entities.	Akbar, Sahir	Publish
4	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	13	Deletion	Where a liquidity waiver has been granted, we do not understand the need to systematically maintain liquidity reporting requirement. Though CRR envisages that liquidity requirements could be waived only partially, this should be substantiated with reasons that would be specific to limited circumstances. In general, liquidity requirements, including liquidity reporting requirements, should be waived in full. It should be clarified that the waivers that have been already granted in full should not be modified to restore individual liquidity reporting requirements, in line with ECB answer to EBF letter dated Dec 7, 2020 on the extension of existing waiver for the application of (Title I of) Part Six of CRR. When liquidity sub-groups are modified or for new sub-groups, this should also be the case. Keeping in place liquidity reporting requirements at solo level would be contrary to the proportionality principle and contrary to the waiver principle itself. We suggest deleting of the following paragraph: “(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.” This paragraph is detrimental because it would mitigate the full benefits of the waiver, and would maintain the liquidity reporting burden for European banks for entities that would be waived from liquidity requirements as they are included in liquidity sub-groups.	The systematic denial of waiving individual liquidity reporting requirements would contradict the objective of the waiver and would maintain the reporting burden for European banks in a context where a liquidity waiver has been granted.	Akbar, Sahir	Publish

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5	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	14	Deletion	General conditions – all waiver applications – (2) (ii) – 2nd sentence: ECB could use the internal monitoring reports referred to in page 14 for the assessment of their level of adequacy liquidity and/or funding management and control over the past two years as the ECB has already received them from Significant Institutions (SIs) and we would see no added value in sending them again while it would generate unnecessary workload for the industry. We suggest deleting the requirements for SI to provide with the above-mentioned reports.	To reduce the operational burden for European banks in a context where the ECB already owns all the reports needed for its assessment.	Akbar, Sahir	Publish
6	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	14	Clarification	General conditions – all waiver applications – (2) (ii) – 3rd sentence: The identification of obstacles to the free transfer of funds should be aligned with the wording of Commission Delegated Regulation (EU) 2015/61 Articles: - Art 8.2 Assets held in a third country where there are restrictions to their free transferability shall be deemed readily accessible only insofar as the credit institution uses those assets to meet liquidity outflows in that third country. Assets held in a nonconvertible currency shall be deemed readily accessible only insofar as the credit institution uses those assets to meet liquidity outflows in that currency. - 32.8: Credit institutions shall take liquidity inflows which are to be received in third countries where there are transfer restrictions or which are denominated in non-convertible currencies into account only to the extent that they correspond to outflows respectively in the third country or currency in question.	The ECB Guide should be consistent with Articles 8.2 and 32.8 of the Commission Delegated Regulation (EU) 2015/61.	Akbar, Sahir	Publish
7	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	15	Deletion	General conditions – all waiver application – (4) (ii) 2nd sentence: "[…] 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;" The proposal maintains that applying bank would be required to support free movement of funds evidence and the absence of conditions by means of a legal opinion. This requirement is not expressly stated in Article 8 of CRR (nor article 7 CRR). Such requirement also appears as inappropriate: it is a generally accepted and principle of law that it is impossible to provide positive evidence of a negative fact. Furthermore, requiring a legal opinion in this regard is questionable considering that the EU Commission has already examined the issue to conclude that its "review has not revealed relevant legal obstacles that would prevent institutions from entering into contracts that provide for the free movement of funds between them within a single liquidity sub-group".	The legal opinion requirement is not expressly stated in Article 8 CRR (nor article 7 CRR) and it doesn't seem relevant implying burdensome tasks.	Akbar, Sahir	Publish
8	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	15	Deletion	General conditions – all waiver application - (5) (i) This requirement is not expressly stated in Article 8 of CRR (nor article 7 CRR). Such requirement also appears as inappropriate: it is a generally accepted and principle of law that it is impossible to provide positive evidence of a negative fact. Furthermore, requiring a legal opinion in this regard is questionable considering that the EU Commission has already examined the issue to conclude that its "review has not revealed relevant legal obstacles that would prevent institutions from entering into contracts that provide for the free movement of funds between them within a single liquidity sub-group".	The legal opinion requirement is not expressly stated in Article 8 CRR (nor article 7 CRR) and it doesn't seem relevant implying burdensome tasks.	Akbar, Sahir	Publish
9	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	15	Deletion	The requirement for 'a confirmation from the relevant NCA that the national liquidity provisions, where applicable, do not contain material practical or legal impediments to the fulfilment of the contract.' is rather strange given the maximum harmonization principle (and LCR / NSFR fully phased-in in EU). Suggest to take that out (to avoid NCS will come with other issues as well).		Akbar, Sahir	Publish
10	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	16	Deletion	General conditions –All waiver applications (Page 16 – 5.(iv) We do not understand why "the credit institution should provide an internal assessment which concludes that the waiver has no disproportionate negative effects on the resolution plan" as the resolution plan is not in the hand of the credit institution and we suggest to delete this part.	This constraint is not enforceable as the resolution plan is in SRB's remit.	Akbar, Sahir	Publish
11	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	16	Amendment	Further specifications – waiver of the NSFR requirement There should be only one six months' time limit / prior notice period for the contractual commitment. The rationale is that the objective of the contracts to be signed between the entities part of the sub-group is the same (providing for the free movements of funds between them to enable them to meet their individual and joint obligations) and will be materialized through one single contract. It would not make sense to have to articulate two sets of commitments for LCR and NSFR while the objective of those commitments is the same. The 6-months' time limit / prior notice is fully sufficient at Group and entity level to take all necessary actions and to anticipate all the changes that need to be operated in this type of situation. A 18 month horizon would be far too long a requirement.	The ECB additional criteria to instruct waiver liquidity requirements should be the same and apply to all liquidity requirements, i.e. across LCR and NSFR. It would not make sense to have to articulate two sets of commitments for LCR and NSFR while the objective of those commitments is the same.	Akbar, Sahir	Publish

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12	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	17	Amendment	Regarding paragraph (3) within "Waivers of the LCR and NSFR requirements at the cross-border level ", we do not understand the rationale behind the decision to take an amount of 75% of the level of HQLA and available stable funding at the solo or sub-consolidated level in one Member State. This amount of 75% was justified in the ECB November 2016 Guide on options and discretions as enabling "to comply with the fully phased-in LCR requirements at the solo or sub consolidated level, in accordance with Commission Delegated Regulation (EU) 2015/61". Furthermore, a 50% level was envisaged in the 2016 ECB Guide based on a "reassessment of the specifications in light of supervisory experience and the development of the institutional mechanism in place within the banking union to ensure the safety and freedom of cross-border intragroup liquidity flows". Therefore, we propose to add the following sentence at the end of paragraph (3), based on the wording of ECB 2016 Guide: "The ECB will reassess the possibility to set a lower bound at 50%, in light of supervisory experience and the development of the institutional mechanisms in place within the banking union to ensure the safety and freedom of cross-border intragroup liquidity flows." Indeed, high thresholds are in contradiction with the European will to enable liquidity to flow freely within the Banking Union (as asserted notably by Andrea Enria). These high thresholds require to maintain liquidity ring fenced up to these amounts at the subsidiary level which prevents companies from efficiently managing their liquidity resources within groups and ultimately to efficiently finance the European Economy.	To clarify the rationale for taking an amount of 75% of the level of HQLA and available stable funding at the solo or sub-consolidated level in one Member State. And to amend the draft revised guide to maintain possibility envisaged in 2016 ECB of a lower threshold of 50%, consistently with EU ambitions on the Banking Union.	Akbar, Sahir	Publish
13	Section II - Chapter 1 Consolidated supervision and waivers of prudential requirements	18	Amendment	Documentation for Article 8 of the CRR – (ii) (page 18) A letter signed by the parent undertaking's CEO, with approval from the management body is also an unnecessary and considerable burden for large groups with a substantial amount of subsidiaries and can be viewed as a deterrent measure.	The requirement of execution by parent undertakings CEO with approval from the management body appears to be too restrictive.	Akbar, Sahir	Publish
14	Section II - Chapter 2 Own Funds	22	Amendment	Where share issuances cannot vary, the notification procedure for subsequent issuances of CET1 instruments should be simplified.	The notification procedure is cumbersome, especially in jurisdictions like France where only one type of CET1 instruments (common shares) exists as per the company law. It seems to us that the following pieces of information are dispensable in such contexts where the shares issuances cannot vary: (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 (…) (iii) there are no other arrangements that would alter the economic substance of the instrument, pursuant to Article 79a of the CRR; (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 the compliance with Articles 28 or 29 CRR and the relevant delegated regulation; (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 A simplified procedure should therefore be allowed in the cases where one type of CET1 instruments exists as per the company law	Akbar, Sahir	Publish
15	Section II - Chapter 2 Own Funds	24	Amendment	Calculation of the trigger of AT1 instruments issued by a subsidiary in a third country: An assessment of whether the conversion trigger under Third Country Law is equivalent to the trigger defined under article 54 can take a significant length of time. The ECB should proactively seek equivalence opinions from the EBA on each jurisdiction and each jursidiction should be deemed equivalent after a defined period if an equivalence assessment has not yet been performed.	For each third country jurisdiction, the ECB should proactively ask to receive the EBA Opinion on whether the conversion trigger under Third Country Law is equivalent to the trigger as defined in article 54. This should be done for each jurisdiction prior to a concrete issuance and should only be reviewed in case both Regulations (CRR of Third Country Law) are amended. We believe that this process shouldn't be performed on an ex-post basis for each single issuance, which would delay the assessment on the eligibility of the AT1 instruments. As a result of this, the Banks with important subsidiaries on third countries will have certainty on the level of the trigger under Third Country Law required in order to be eligible at consolidated level. Where an assessment of equivalence has been sought or is being waited on, as in other processes of approval by the authorities and to avoid an unduly lengthy process, a delay should be defined after which it can be deemed that the ECB considers the national law of the third country or the contractual provisions governing the AT1 instruments as equivalent to the requirements set out in Article 54 of the CRR, and hence that the 5,125% or higher trigger shall be calculated in accordance with the national law of that third country or contractual provisions governing the instruments.	Akbar, Sahir	Publish

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
16	Section II - Chapter 2 Own Funds	24	Amendment	Reduction of Own Funds: Excess Capital Margin Requirement (Article 78(1)(b) of the CRR): We suggest removing the condition/factor for a reduction of own funds under paragraph (i) that requires to banks to exceed overall capital requirements over a three-year horizon or at least that a materiality threshold be applied because we think this process could be dispensable for non-material reductions of own funds as those would only have a minor impact on the capital plan whereas this requirement would create an additional operational burden for both banks and ECB.	Unnecessary operational burden for both banks and ECB when the reduction of own fund is not material.	Akbar, Sahir	Publish
17	Section II - Chapter 2 Own Funds	24	Deletion	The requirement for excess margin requirements to be met at all times across the 3-year horizon that authorities ask institutions to communicate OF / EL / leverage trajectories goes beyond the CRR and should be removed.	Article 78 of the CRR requires that the own funds and eligible liabilities of the institution “exceed the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the competent authority considers necessary” at the time of the own funds reduction, but do not ask for this same margin to be respected on the whole 3-year horizon that the authorities ask the institutions to communicate OF / EL / leverage trajectories on. We understand that the different OF / EL / leverage requirements have to be met at all times of this 3-year period, but requiring the different excess margins to also be met at all times seems to go beyond what the CRR requires.	Akbar, Sahir	Publish
18	Section II - Chapter 3 Capital Requirements	29	Amendment	The ECB considers appropriate to require a fixed maturity at 2.5 years in case that institutions have not received permission to use their own loss given default (LGD) and conversion factors for exposures to corporates, institutions or central governments and central banks. This will imply, for a given PD and LGD, a unique risk weight whatever the maturity of the exposure is, reducing consequently the risk sensitivity of the IRB formula. We think that don’t allowing for the actual maturity for those exposure classes subject to the foundation approach will create a disparity in risk weighted assets. Given the absence of any internal model for the calculation of the maturity we suggest the ECB to apply the national discretion that allows to use the cash flow maturity for portfolios treated under the FIRB. The introduction of a maturity mitigation should be foreseen especially for trade finance products under the foundation approach under the following circumstances: (i) short term self-liquidating trade transactions (ii) issued as well as confirmed letters of credit that are short term.	Allowing for the effective maturity instead of the regulatory parameter set at 2.5 for exposure under the FIRB approach would lead to a more accurate risk weight of short-term exposure thanks to a better model accuracy due to the application of a parameter based on actual contracts (for which conservative assumptions are not warranted). This waiver is particularly relevant in view of the future implementation of the Basel III framework, under which all large exposure portfolios will be treated under the FIRB approach. In particular, appropriate arrangements as regards the maturity are needed in respect of the treatment of Trade finance exposures, that are typically short term and are overly penalised by the application of a 2.5 fixed maturity. Since the trade finance under the Basel III standard would already face a relevant increase of the average CCFs applied to this business, recognising a different maturity would help the business sustainability over time. Basel III allows a national discretion for the use of the effective maturity (paragraph 107) and this has been endorsed by the EBA in the Basel III CfA 5/8/2019 (Section 4.2.7. paragraphs 390-392).	Akbar, Sahir	Publish
19	Section II - Chapter 5 Large Exposures	39	Amendment	We suggest restricting paragraph 3. to non-group exposures and at least excluding EU intra-group exposures: “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, the credit institution would be expected to show 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 out of Group [words in bold to be added] exposure to exceed 100% of the Tier 1 capital of the credit institution.” Limitations to intragroup exposures can be problematic from a level playing field point of view (as intragroup discretionary exemptions decisions could be granted at national level), but also as impediment to the free movement of funds cross-borders, jeopardizing the need for flexibility to deploy resources where needed within a group; it is a source of fragmentation. For example, in Europe, limitation of intragroup exposures could limit the application of CRR article 8 (supervisory permission for liquidity waivers). Under existing legislation, competent authorities have been endowed with the possibility to waive the application of requirements on an individual level for subsidiaries or parents within a single Member State or part of a liquidity sub-group spread across several Member States, subject to safeguards ensuring that liquidity are distributed adequately between the parent undertaking and the subsidiaries. Obligation to manage liquidity at entity level for centralised models within the Eurozone is not consistent with the European treaty of free circulation of capital and liquidity: “As a rule, there should be no restriction to the free movement of capital within the European Union. Under Article 63 of the Treaty on the Functioning of the European Union ("TFEU"), all restrictions on the movement of capital and payments between Member States shall be prohibited” (https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/120216-legal-basis-free-movement-capital_en.pdf). It prevents institutions from managing those resources efficiently at the level of the group, particularly considering the main prudential objective of the liquidity buffer and stable funding in a crisis scenario.	Inconsistency with the principle of free circulation of capital and liquidity within the Eurozone, overlap with the EU resolution framework and impediment to the Banking Union	Akbar, Sahir	Publish

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
				To our members, limits on exposures towards subsidiaries or the parent entity of the same group supervised on a consolidated basis, overlap with other requirements such as the Eurozone resolution framework. The Bank Recovery and Resolution Directive (BRRD) and its integrated application within the Euro area provide for legal and institutional arrangements that foresee supervisory and resolution colleges to bring appropriate solution to cross border groups' crisis preserving both financial stability and circulation of funds in the Union. Furthermore, all EU institutions are subject to internal Minimum Requirements of Eligible Liabilities (MREL) which ensures that in case of resolution, the subsidiary will be appropriately recapitalised. Given the existing comprehensive resolution framework, no overlapping or contradicting measures on the free flow of liquidity and capital within groups should be added, particularly in a context where consolidation in the banking sector is encouraged (cf. notably "The yin and yang of banking market integration – the case of cross-border banks" speech of Andrea Enria in November 2020 and the ECB Guide on the supervisory approach to consolidation in the banking sector - https://www.bankingsupervision.europa.eu/press/speeches/date/2020/html/ssm.sp201118~11789c830f.en.html) Beyond the issue of Intragroup exposures that is currently caused by certain national options exercised by EU Member States, it is also of importance to our members to ensure that different business models or liquidity management frameworks (centralised or decentralised) are covered under European regulation consistently. The issue of intragroup exposures affects not only groups exclusively based in Europe, but also European banking groups with an international presence in third countries. Thus, the approach for exposures of EU institutions with their European subsidiaries, or parent undertaking or other subsidiaries of that parent undertaking should be the same as for their exposures with third countries subsidiaries subject to equivalent standards. We believe that intragroup exposures of institutions subject to CRR and supervised on a consolidated basis should not be a source of large exposures breaches, as long as the relating subsidiaries are covered by the supervision on a consolidated basis within the EU or in a third country and are subject to the CRR (Regulation 575/2013) or with equivalent standards.			
20	Section II - Chapter 5 Large Exposures	40	Deletion	Third country intragroup exposures should continue to apply as they currently do and the proposed change to grant exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution should be deleted; it adds complexity to the existing procedure, which is already robust.	The ECB's proposed approach creates greater fragmentation in the application of LE intragroup exemptions due to parallel EU requirements / reviews as well as differences in national implementations of transitional provisions: (i) Commission Delegated Regulation (EU) 2021/237 of December 21, 2020 (the "Clearing RTS Amending Regulation") extends the intragroup clearing exemption to cover transactions between EU and third-country entities until June 30, 2022. The ECB should not front-run this process as it could lead to additional operational complexities and market dislocation. (ii) The proposed changes are in advance of the EBA's report on the quantitative impact of removal of certain LE exemptions, including those covered under Article 400(2)(c) and (d). The ECB should take this into account before making any decisions in this area as could fragment the approach even more widely. (iii) As outlined in the consultation, due to national implementation of LE limits, the majority of member states have exercised the transitional provisions per Article 493(3) CRR which apply up to December 2028, whilst others will be subject to the new ECB process immediately creating a lack of harmonised application of LE intragroup exemptions across the EU. This affects a limited group of credit institutions (due to the facts that only limited Member States have not applied the Member State opion ex article 493(3) CRR) in a disproportionate manner and does not ensure a level playing field between the different credit institutions under ECB supervision. If applying the new requirements, the ECB should consider a later application date e.g. 2029 to ensure consistency. As such, the ECB should only reconsider its current proposal at a later date, once the revised expectations can be applied in a consistent manner and timeframe across the EU. At such a time, we would also recommend that there is greater clarity in the review process, specifically with regards to the conditions against which the applications will be assessed, the maximum timeframe to review applications, and the process for firms to address any concerns the ECB may have with respect to an application prior to a final decision. In addition, while we continue to support robust risk management, the ECB should also consider the global implications of creating more restrictions on intragroup large exposures, with the aim not to undermine the globally accepted model of centralised risk management and create further ring-fencing of capital and liquidity. The ECB should also consider the risk of other jurisdictions introducing similar measures which could constrain the capital management and financing capacity of European banks.	Akbar, Sahir	Publish
21	Section II - Chapter 5 Large Exposures	40	Clarification	In the event that the ECB does not maintain the current policy guidance on large exposures, as suggested above, the guidance should clarify what is to be understood in respect of the phrase "adequate arrangements" which is expressed in point (i).	While we support enhanced cooperation and information exchange between the ECB and home authorities of hosted banks, supervisory colleges should serve as the forum to facilitate the requirements listed under point (i), and the ECB should ensure additional formalised arrangements, such as MoUs, are not required.	Akbar, Sahir	Publish
22	Section II - Chapter 5 Large Exposures	40	Clarification	In the event that the ECB does not maintain the current policy guidance on large exposures, the policy guidance should also clarify what is to be understood in respect of the phrase "hinder in any way" which is expressed in point (iv). "The structure of the part of the group which is located outside the EU does not hinder in any way the timely repayment of the exposure by the counterparty to the credit institution."	Annex I of the ECB Regulation on options and discretions (2.a.(i)) currently states that credit institutions must 'take into account whether there are any current or anticipated material practical or legal impediments that would hinder the timely repayment of the exposure by the counterparty to the credit institution other than in the event of recovery of resolution situation when restrictions as detailed in the BRRD are required to be implemented' which is explicitly addressed in the legal opinion. "Hinder in any way" creates the impression that ECB aims for additional limitations or requirements to be taken into account, posing the question if that is indeed envisaged.	Akbar, Sahir	Publish

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
23	Section II - Chapter 6 Liquidity	42	Clarification	The ECB has revised language on the frequency of liquidity reporting during a period where the firm is in stress. This previously set an expectation that LCR reporting might be required on daily basis during stress, but implied NSFR would not be subject to this. This language has been diluted somewhat, and was unclear (even in original version).	The ECB's Guide previously set an expectation that daily liquidity reporting could be required where entities were not in compliance with, or expected not to be in compliance, with their CRR obligations. We have two comments on this: (i) The original and proposed text was ambiguous in saying reporting could be required by 'the end of each business day', implying liquidity reports could be submitted to the ECB on a same day basis when the industry typically operates on a T+2 cadence, [which is also consistent with the timeframe required for SSM reporting]. It would be appropriate for the ECB to clarify that the expectation for daily LCR reporting is for submissions to be made on a T+2 basis. (ii) With respect to NSFR, as a longer term metric, we believe the reporting requirements should be proportionate to the longer nature of the requirement and should be less frequent than the daily reporting expectations for LCR, alongside a longer submission period.	Akbar, Sahir	Publish
24	Section II - Chapter 6 Liquidity	43	Clarification	Additional Outflows for other products and Service: The ECB addresses in the paragraph of its guide the products and services that fall under the Art. 23 of Commission Delegated Regulation (EU) 2015/61, i.e. those requiring potentially additional outflows for the purpose of the LCR. The ECB guide however does not provide clarification on the equivalent provisions for the NSFR addressed in the article 428p (10) of the REGULATION (EU) 2019/876. In our view the Guide should also clarify the provisions of the article 428p (10) of the Regulation (EU) 2019/876 on the Net Stable Funding Ratio (NSFR).	Clarification request on the provisions of the article 428.p.10 of the Regulation (EU) 2019/876 (NSFR)	Akbar, Sahir	Publish
25	Section II - Chapter 6 Liquidity	44	Amendment	The ECB sets out cases where it would impose supervisory outflow rates pursuant to Article 25(3) of Commission Delegated Regulation (EU) 2015/61. One of those cases is where certain credit institutions develop aggressive marketing policies 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. In this instance, the ECB should justify its assessment of a credit institution applying “aggressive marketing policies”, particularly as this term is not defined either in the CRR nor in the Delegated Regulation (Article 25(2)).	When imposing supervisory outflow rates pursuant to Article 25(3) of Commission Delegated Regulation (EU) 2015/61, the ECB should justify its assessment of a credit institution developing 'aggressive marketing policies' as this term is not defined in the CRR nor in the Delegated Regulation (Article 25(2)).	Akbar, Sahir	Publish
26	Section II - Chapter 6 Liquidity	44	Clarification	We welcome the new presumption within article 26 that notional pooled products can be treated on a net basis in the all currency LCR calculation, and believe the criteria to be reasonable. We have two additional comments on the article 23 requirements.	(i) New language has been added that requires if there is any mismatch in timing of the inflow and the outflow, this must be segregated and held in the form of HQLA; additionally if the inflow arises before the reference date for the LCR calculation it must not be counted as an inflow elsewhere in the ratio. We are unclear on what this paragraph is seeking to achieve, and how it is intended to operate and would welcome clarification of this. Specifically, whether the ECB meant 'segregated' in the sense of meeting the operational requirements in article 8(3), i.e. under the control of the Treasury function or segregated in a legal sense, meaning not part of the bankruptcy estate of a Firm. Also, if article 8(3) was intended, why it would be appropriate to count this cash in HQLA if the outflow is (presumably) being counted as an interdependent outflow. And finally, if a flow arose prior to the reference date, how could it still appear as a contractual future inflow relevant to the LCR calculation (it would seem to us it has been converted to cash already). (ii) We believe it would be appropriate to also create a presumption the cleared client derivatives should qualify for interdependent treatment, on similar grounds to those set out in the NSFR. Specifically, we believe that where a firm acts as agent or riskless principal in taking margin from clients and posting this to CCPs, there should be a presumption these flows can be treated as interdependent as there is no funding or liquidity risk to the Firm. The alternative treatment of counting these flows can be punitive for firms subject to the inflow cap, as it requires LCR liquidity to be held for riskless activity.	Akbar, Sahir	Publish
27	Section II - Chapter 6 Liquidity	45	Amendment	The Guide must make it clear that banks are not required to analyze the LCR cashflows on intraday basis.	The LCR and LCR stress test are not designed to capture expected or unexpected intraday liquidity needs (as acknowledged by the Basel Committee in paragraph 30.26 of the LCR text). The Guide states however on page 45 (section 4i) that d*ue consideration should be given to delays in payment systems that could prevent the condition in Article 26(c)(i) of Commission Delegated Regulation (EU) 2015/61 from being met* (the liquidity outflow net of an interdependent inflow arises compulsory before the outflow), which implies that this condition applies also on intraday basis. A consequence of an intraday LCR could be that not only overnight overdraft facilities but also intraday settlement facilities should be included in the LCR considerations. The Guide must make it clear that banks are not required to analyze the LCR cashflows on intraday basis.	Akbar, Sahir	Publish

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28	Section II - Chapter 6 Liquidity	46	Deletion	The following point iii should be deleted: *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.*	If an application of Article 26 is approved in relation to a cash pooling arrangement involving accounts denominated in multiple currencies, such approval should be recognized for the purpose of reporting in a currency subject to separate reporting in accordance with Article 415(2) of the CRR. We believe there is no merit to report on a gross basis in a separate currency LCR reporting if legally binding multi-currency cash pool arrangements are in place. When balances in different currencies in a cash pool arrangements are automatically revalued based on spot exchange rates, any moves in exchanges rates would be inevitably reflected in adjustments to overall clients' balances, and they will not affect a bank. Gross single currency reporting (as currently proposed): a)Would misrepresent the LCR in separate currencies because reported data would be detached from legal and economic substance of cash flows in a cash pool arrangement. A significant currency LCR on gross reporting basis is meaningless when a cash pooling arrangement includes the enforceable contractual right to set off the balances of the original accounts through the transfer into a single account at any point in time as per CRR Article 429b3. b)Would imply that reported data would not be viable for liquidity risk analysis unless corrected to reflect underlying legal and economic nature of contracts. It would require the JST to make additional manual adjustments to the reported data in a single currency LCR before any Pillar II assessment could be made.	Akbar, Sahir	Publish
29	Section II - Chapter 6 Liquidity	55	Clarification	The policy guidance should further specify that firms can rely on their own assessment of compliance with the criteria in 428(f) for interdependent treatment in NSFR.	The Guide sets out the criteria for interdependent treatment in NSFR. While it is clear Article 428f(1) items would require CA approval, the items under Art. 428f (2) are listed in the CRR as meeting the conditions set out in paragraph 1 of the same article. The guide It does not explicitly comment on the situation in 428f(2) where there is a presumption certain products qualify for interdependent treatment without requiring ECB approval. The final ITS on supervisory reporting has removed the wording on interdependent items requiring CA approval prior to reporting, and it is understood several JSTs already allow the reporting of items listed in 428f(2) as interdependent without approval. We would like the Guide to be expanded to be explicit that these provisions can be enacted by firms based on their own assessment of compliance with the criteria in 428f(2).	Akbar, Sahir	Publish
30	Section II - Chapter 8 - Reporting on prudential requirements and financial information	61	Deletion	"The ECB 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". We believe this chapter to be redundant and could be withdrawn from the GL.	There is no evidence demonstrating that duplicative reporting is very rare as stated in this paragraph. Therefore, banks should not be limited in the use of the waiver when they deem it is appropriate.	Akbar, Sahir	Publish
31	Section II - Chapter 11 Governance arrangements and prudentail supervision	63	Amendment	Combining the functions of Chairman & CEO (Article 88 (1) (e) CRD IV) The separation of the executive and non-executive functions: The draft Addendum to the ECB Guide keeps this item in observing that "the ECB considers the separation of the functions of Chairman and CEO should be the rule." A close examination reveals that such a statement is not supported by the applicable legal framework: -Article 88.1.e of CRD IV stipulates that: "the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities." This provision is not saying that the chairman on an institution should not have executive powers. It merely prohibits one and the same person to exercise the functions of the Chairman and CEO (with the aim to avoiding the concentration of power in a single person). It needs to be highlighted that various Member States have implemented Article 88 CRD IV by means of legislation. -The Guidelines of the Basel Committee on Banking Supervision setting the Corporate Governance principles for banks (July 2015) cannot be used either to support the general view taken in the draft Addendum. Paragraph 62 of those Guidelines acknowledges way that "In jurisdictions where the chair is permitted to assume executive duties, the bank should have measures in place to mitigate any adverse impact on the bank's checks and balances, eg by designating a lead board member, a senior independent board member or a similar position and having a larger number of non-executives on the board." The Basel text is unambiguous: a chair is permitted to have executive duties. Moreover, the spirit and objective of the Basel guidelines are clearly not about prohibiting a chairman to assume executive duties but about preventing an excessive concentration of power in an executive chairman. -Likewise, the European Banking Authority's Guidelines on Internal Governance under Directive 2013/36/EU stipulate (under Tittle II, section 4 point 36) that "As a general principle, the chair of the management body should be a non-executive member. Where the chair is permitted to assume executive duties, the institution should have measures in place to mitigate any adverse impact on the institution's checks and balances (e.g. by designating a lead board member or a senior independent board member, or by having a larger number of non-executive members within the management body in its supervisory function). In particular, in accordance with Article 88(1)(e) of Directive 2013/36/EU, the chair of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a CEO within the same institution, unless justified by the institution and authorised by competent authorities" These three documents convey the same message: it is best practice to split the roles of chairman and CEO, but this does not mean that it is inappropriate to have an executive chairman. As a result, the starting point which the ECB proposes adopting - i.e. that there would be a need to separate the "executive and non-executive functions" - is not consistent with the current applicable legal framework. The final text of the Memorandum should, therefore, restrain from stating that "the ECB considers the separation of the functions of Chairman and CEO should be the rule."	Whilst it is best practice to split the roles of chairman and CEO, this does not mean that it is inappropriate to have an executive chairman. We believe the ECB statement that "considers the separation of the functions of Chairman and CEO should be the rule." is inconsistent with the CRD, Basel Guidelines and the EBA's guidelines on internal governance, where it is clear that the chair is permitted to assume executive duties as long as the institution has measures in place to mitigate any adverse impact on the institution's checks and balances, and should therefore be deleted.	Akbar, Sahir	Publish

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32	Section III - Chapter 4 Liquidity	70	Clarification	Multiplier for retail deposits covered by a deposit guarantee scheme (Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61 and Article 13 of the ECB Regulation): Clarity is sought regarding stress scenarios needed to evidence stability of deposits, and in particular whether banks can develop their own scenarios.	We are concerned with the *stress scenarios* that need to be presented, and with the clarifications it is conditional to obtain the waiver having evidence of the behaviour of the depositors. We would like to have more information about the expectations of the ECB about this point and how to present the scenarios per the regulation or if it is possible to develop others by the Group to demonstrate the stability of the accounts.	Akbar, Sahir	Publish

Template for comments

Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB Regulation on Options and Discretions under Union law

Please enter all your feedback in this list.
When entering feedback, please make sure that:
- **each comment deals with a single issue only;**
- **you indicate the relevant article/chapter/paragraph, where appropriate;**
- **you indicate whether your comment is a proposed amendment, clarification or deletion.**

Deadline: midnight CET on 30 August

ID	Section	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	'Section II Net Stable Funding Ratio (NSFR) Article 12a	Amendment	ECB determines different required stable funding factors for the off-balance-sheet exposures in the scope of Article 428p(10) of Regulation (EU) No 575/2013. Article 5 of Regulation (EU) No 61/2015 defines stress scenarios for the liquidity coverage ratio. These stressed conditions affect the outflows rate estimated for off-balance-sheet exposures. The same stress scenarios are not applied to the net stable funding ratio. It is not appropriate to apply outflow rates of the LCR, that is a 1-month stressed metric, as RSF factors on NSFR, which is a 1-year non stressed metric.	Applying on some specific products a required stable funding factor equal to the outflow weight applied in the LCR to the same products might produce an overestimate of the requirement, because the outflows occurring in 30 days (included in the LCR) do not necessarily become assets with a tenor longer than 1 year. LCR and NSFR rates are not aligned and are not based on the same rational. Outflow rates should be suitably calibrated to reflect the objective of these metrics.	Akbar, Sahir	Publish
2	'Section II Net Stable Funding Ratio (NSFR) Article 12a	Clarification	The article 12a of the Regulation (linked to the article 428p(10) of REGULATION (EU) 2019/876) related to the required stable funding factors to be applied to the off-balance sheet exposure states that "Unless the ECB determines different required stable funding factors, for the off-balance-sheet exposures [...] institutions shall apply to off-balance sheet exposures [...] required stable funding factors that correspond to the outflow rates that they apply to related products and services in the context of Article 23 [...]". In our view it would be useful to have a clarification on: - how the ECB is going to determine different required stable funding factors and - the evolution and the timeline of any potential upcoming reviews of article 23 of the Commission Delegated Regulation (EU) 2015/61 from the perspective of the Net Stable Funding Ratio	It will provide greater certainty regarding how the ECB will determine different RSF factors for off-balance sheet exposure. In addition, it will provide clarification regarding the evolution of art.23 and the related timeline for potential reviews / recalibration of NSFR related RSF factors for off-balance sheet exposures.	Akbar, Sahir	Publish

Template for comments

Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB Guideline on Options and Discretions under Union law

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Deadline: midnight CET on 30 August

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1	Annex I	Clarification	For LSIs, the present proposals changes the authority responsible for assessing equivalence of third-country supervision for the purposes of Article 400(2)(c) CRR from the competent authority to the European Commission. For exposures to EU entities (with third country consolidated supervision), this is stated in implementing the exemption for intra-group large exposures to third country entities, Annex I to the amended ECB Guideline for LSIs includes the reference that "For the purposes of Article 6(c), third countries listed in Annex I to Commission Implementing Decision 2014/908 (*) are deemed to be equivalent." We also note that for exposures to third country entities, the ECB Recommendation applying the ECB Guide on this topic refers to Annex I of Regulation (EU) 2016/445 with the same wording. This change in equivalence lists has a potentially large impact on LSIs, where competent authorities have currently assessed certain third countries as equivalent where the European Commission has not. LSIs' local business models and local risk management practices may rely on the exemption of intra-group large exposures being in place, in full transparency with local competent authorities. As the European Commission is also still considering equivalence for some jurisdictions, notably the UK, a transition period for this change with respect to LSIs would be required.	The change in equivalence regime on exemptions for intra-group large exposures to third country entities would require a transition period for LSIs, whose local business models and local risk management practices may rely on the exemption of intra-group large exposures being in place, in full transparency with local competent authorities.	Akbar, Sahir	Publish

Template for comments

Public consultation on revisions to the ECB's polices concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB Recommendation on Options and Discretions under Union law

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Deadline:	midnight CET on 30 August

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1					Akbar, Sahir	Publish