



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

Institution/Company

NVB

Contact person

Mr/Ms

First name

Surname

Email address

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General comments

Template for comments

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

ECB 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 23 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					NVB	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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1	Section II - Chapter 1, Consolidated supervision and waivers of prudential requirements	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 condition cannot be fulfilled by the institution	This constraint is not enforceable as the resolution plan is in SRB's remit, institutions do not have a full picture of the resolution plan.	NVB	Publish
2	Section II - Chapter 5 Large Exposures	Deletion	Third country intragroup exposures should continue to apply as they currently do in accordance with the ECB Regulation and the proposed change to grant exemptions only after conducting a case-by-case prior assessment following an application from the credit institution should be deleted.	The ECB's proposed approach creates greater fragmentation in the application of LE intragroup exemptions due to differences in national implementations of transitional provisions. Due to national implementation of LE limits, almost all member states have exercised the transitional provisions per Article 493(3) CRR which apply up to December 2028, whilst others (only credit institutions in the Netherlands in addition to Ireland and Greece) will be subject to the new ECB process, the lack of harmonised application of LE intragroup exemptions will be enhanced across the EU. This affects credit institutions in the Netherlands specifically due to the fact that the Netherlands (as one of the limited Member States have not applied the Member State option 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. The proposed change seems to be intended to solve some issues related to the departure of the United Kingdom from the European Union, but the impact relates to entities located outside the UK unintendedly. The banks have taken note of the additional requirements that the ECB introduces in the amended Guide (p. 40-41) when assessing whether the conditions in Article 400(3) of the CRR are fulfilled, with regard to exposures incurred to undertakings that are established in third countries. Although annex I of the amended Regulation will continue to state that for the purposes of Article 9(3), third countries listed in Annex I to Commission Implementing Decision 2014/908/EU are deemed to be equivalent, the ECB seems introduce additional discretion on whether exposures to entities in the relevant countries indeed qualify for exemption. In this respect the proposed assessment criteria goes beyond what is possible under the Regulation.	NVB	Publish
3	Section II - Chapter 5 Large Exposures	Clarification	The policy guidance should clarify what is to be understood in respect of the phrase "hinder in any way" which is expressed in point (iv).	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.	NVB	Publish

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4	Section II - Chapter 5 Large Exposures	Deletion	The requirement regarding adequate arrangements to be in place which enable the ECB to exchange information and cooperate with the competent authority responsible for prudential supervision of the counterparty on a permanent basis should be deleted.	Only the ECB is able to ensure fulfilment of this requirement. In case the ECB deems it necessary to conclude memoranda of understandings with relevant supervisors in a specific third country it should not be impossible for credit institutions to make use of the intragroup large exposure exemption in absence of such agreement.	NVB	Publish
5	Section II - Chapter 6 Liquidity	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 due 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.	NVB	Publish
6	Section II - Chapter 6 Liquidity	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."	NVB	Publish

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ECB Recommendation on Options and Discretions under Union law

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ECB Guide on Options and Discretions under Union law

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