



**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**

European Savings and Retail Banking Group (ESBG)

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

**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 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;
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**Deadline:** midnight CET on 23 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		20	Deletion	<p>In section II, chapter 1 [Consolidation], we suggest deleting of the following requirement under number 8: "ii) a qualitative and quantitative assessment of the alleged inadequate representation of the risks or disproportionate effort in applying the equity method" and "(iii) evidence that the alternative ap-proach results in a treatment as conservative as that resulting from applying the equity method".</p> <p>Alternatively and in order to keep the operational effort from such an application low both on the part of the banks but also on the part of the supervisor, we propose limiting the detailed requirements to cases where the sum of the relevant book values reaches a size that is relevant for the group.</p>	<p>ESBG assumes that such requests are usually made for investments with very small and immaterial book values in relation to the parent company. In this respect, we consider the effort resulting from the ECB's requirements to be disproportionate, as this would mean that the institutions would have to regularly determine the equivalence method (which they actually want to avoid) in order to provide the required evidence.</p> <p>Institutions that have already received exemption approval for the old portfolio as of the reporting date of 31 December 2020 will hardly be able to prove the (qualitatively and quantitatively) disproportionate effort of applying the equivalence method in the application for newly acquired participations that are immaterial in terms of amount.</p> <p>Hence, ESBG suggests to delete this requirement. Alternatively and in order to keep the operational effort from such an application low both on the part of the banks but also on the part of the supervisor, we propose limiting the detailed requirements to cases where the sum of the relevant book values reaches a size that is relevant for the group.</p>	Timpano, Roberto	Publish

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2		20	Amendment	<p>In section II, chapter 1 [Exclusion from consolidation], we suggest amending paragraph 9: "In this respect, institutions, financial institutions or ancillary services undertakings which are a subsidiary or an undertaking in which a participation is held may be considered of negligible interest only with respect to the objectives of monitoring institutions when institutions are able to provide strong evidence of such negligible interest on the basis of a comprehensive assessment of all the 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." Our amendment is precisely outlined in the explanation to this comment.</p>	<p>In our opinion, Art. 19 para. 2 CRR does not provide that an exemption can only be granted if an entity is negligible with regard to all risks at the same time, because otherwise Art. 18 CRR would already not provide for a distinction in the regulatory consolidation.</p> <p>ESBG therefore proposes to delete the wording "... of all the risks stemming from these entities..." and to include a wording in the sense of "... of the relevant risks regards to the waiver an institution is applying for".</p> <p>The wording in the next sentence of the draft "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, ..." is also not covered by the regulatory text in our opinion. The possibility to apply for an exemption according to Art. 19 (2) CRR is in no way inferior to other options provided for in the CRR.</p> <p>Under commercial law (nGAAP), insignificant participations are generally exempted from the consolidation requirement. In the case of larger institutions, these exemptions quickly exceed a total amount of EUR 10 million, up to which non-inclusion would be permissible under Article 19(1) CRR even without a case-by-case decision. This makes it necessary to apply for individual case decisions for a large number of participations with very low book values in each case.</p> <p>We assume that divergence should only occur where absolutely necessary. In this respect, we ask the ECB not to generally classify the case-by-case decision under Article 19(2) CRR as an exceptional case, but to consider this as a regular process.</p> <p>We therefore suggest deleting the word "...exceptional ...".</p> <p>The requirements of Art. 18 CRR lead to a distinction of the regulatory scope of consolidation for the purposes of solvency, large exposures, leverage ratio on the one hand, and for liquidity purposes (Part 6 CRR) on the other hand. In order to meet the requirements of Part 6 CRR, the companies listed in paragraphs 3 to 6 of Art. 18 (1) CRR are not to be taken into account. Thus, individual companies may be excluded from the regulatory scope of consolidation for liquidity purposes, while they are taken into account in the regulatory scope of consolidation for e.g. solvency or large exposure purposes.</p>	Timpano, Roberto	Publish

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3		2 13	Deletion	In section II, chapter 1 [liquidity waivers], we suggest deleting the following text from paragraph 4: "(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".	<p>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:</p> <ul style="list-style-type: none"> <li>-In general, liquidity requirements, including liquidity reporting requirements, should be waived in full.</li> <li>-It should also be clarified that the waivers that have been already granted in full should not be modified to introduce individual liquidity reporting requirements.</li> <li>-When liquidity sub-groups are modified or for new sub-groups, this should also be the case.</li> </ul> <p>Keeping in place liquidity reporting requirements at solo level would be contrary to the proportionality principle and contrary to the waiver principle itself. This paragraph would mitigate the full benefits of the waiver and 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.</p> <p>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. Consistency of ECB additional criteria regarding waiver liquidity requirements, i.e. across the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR).</p>	Timpano, Roberto	Publish
4		2 35	Amendment	<p>In section II, Chapter 4, Number 5 (3) (iii), p. 35, while in the English version the part is still the same ("clear commitment"), it was changed in the German version (from "eindeutig zugesagt" to the current "eindeutig verpflichtet").</p> <p>There is no reason to adjust the wording in the German version while it remains unchanged in the English version. Hence, we suggest to leave the translation unchanged as well.</p>	There is no reason to adjust the wording in the German version while it remains unchanged in the English version. Hence, we suggest to leave the translation unchanged as well.	Timpano, Roberto	Publish
5		2 15	Amendment	<p>In section II, chapter 1, number 4(5)(iii) [liquidity waivers], we propose to amend the following wording: "iii) a 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; ".</p> <p>We believe that It should not be provided by the entity requesting the waiver but by communication between competent authorities (as it is usually done). That instead of a waiver request by the CEO it should be allowed to be requested by someone with sufficient powers/qualification.</p>	We believe that It should not be provided by the entity requesting the waiver but by communication between competent authorities (as it is usually done). That instead of a waiver request by the CEO it should be allowed to be requested by someone with sufficient powers/qualification.	Timpano, Roberto	Publish
6		2 29	Amendment	<p>In section II, chapter 3 [maturity of exposures], paragraph 4, considering the coming changes regarding the usage of internal models, we expect the IRB-F portfolio to expand, in particular for short term intrabank exposures, and also more flexibility in the roll-out expectations. We also note the EBA support for a change in level 1 text. Therefore we ask the SSM to allow the utilisation of the effective maturity for IRB-F.</p> <p>Increasing volumes of IRB-F exposures will be experienced in particular in the context for the transposition of the final elements of Basel III.</p>	The SSM should allow the utilisation of the effective maturity for IRB-F. We in fact expect the IRB-F portfolio to expand, in particular for short term intrabank exposures, and also more flexibility in the roll-out expectations. We also note the EBA support for a change in the level 1 text.	Timpano, Roberto	Publish

## 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

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1					Timpano, Roberto	Publish

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### Public consultation on revisions to the ECB's policies 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	article 6	Clarification	<p>In the ECB Guideline, in Art. 6 lit d in conjunction with Annex II, we would like to ask the ECB for a clarification. More specifically, the CRR does not define the term "cash clearing operations" used in Art. 400 para. 2 lit d CRR in more detail. A narrow definition of the term via the ECB Regulation or the ECB Guideline on O&amp;Ds should be rejected. The functions mentioned under No. 2 in letters a to d should be understood as exemplary, with no requirement to meet them cumulatively. Therefore, it should be clarified that the wording "including, but not limited to the following" is to be understood in this sense. We also understand the addition "but not limited to the following" to mean that it is also sufficient for the use of the exemption for network-structured institutions if the legal basis of the regional or central institution provides for the assumption of the central bank function for the institutions affiliated to the network and the liquidity of its members is ensured via the statutes of the institutional protection scheme.</p> <p>The same applies with respect to ECB-Regulation, Art. 9 para. 4 in conjunction with Annex II of that regulation.</p>	<p>We believe that a narrow definition of the term via the ECB Regulation or the ECB Guideline on O&amp;Ds should be rejected.</p>	Timpano, Roberto	Publish

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### Public consultation on revisions to the ECB's policies 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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