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
French Banking Federation

Contact person

Mr/Ms
Mr

First name
Erwin

Surname
Laffeach

Email address
elaffeach@fbf.fr

Telephone number
33640984564

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

General comments

The French Banking Federation welcomes the opportunity to provide comments on the public consultation on draft revisions to ECB policies regarding options and discretions.

We also welcome the greater coherence, effectiveness and transparency of supervisory policies that the ECB seeks to achieve with this update of its options and discretions policies. We deeply regret however the timing of this consultation which covers a wide area of important matters, of 8 weeks only in July and August, i.e. in the middle of summer where many staff members are on leave. This poses a real operational challenge and may impair the quality and the exhaustiveness of our response. In this context, we would appreciate if the ECB could consider additional comments from the industry at a later stage this year.

Moreover, in line with the above-mentioned objectives on supervisory policies enhancement, we believe that a review clause could be usefully inserted in the final revised SREP Guidelines that would also allow the industry to provide a more detailed and evidence-based feedback after the experience it would have gathered by April/May next year for example. We expect the potential additional comments to be targeted compared to the present exhaustive review and that they would thus generate limited additional work on ECB side.

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 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	Section I, 1. Purpose	2	Amendment	We welcome the greater coherence, effectiveness and transparency of supervisory policies that the ECB seeks to achieve with this update of its options and discretions policies. We deeply regret however the timing of this consultation which covers a wide area of important matters, of 8 weeks only in July and August, i.e. in the middle of summer where many staff members are on leave. This poses a real operational challenge and may impair the quality and the exhaustiveness of our response. In this context, we would appreciate if the ECB could consider additional comments from the industry at a later stage this year. Moreover, in line with the above-mentioned objectives on supervisory policies enhancement, we believe that a review clause could be usefully inserted in the final revised SREP Guidelines that would also allow the industry to provide a more detailed and evidence-based feedback after the experience it would have gathered by April/May next year for example. We expect the potential additional comments to be targeted compared to the present exhaustive review and that they would thus generate limited additional work on ECB side.	To allow for higher quality feedback from the industry on ECB options and discretions policy	Laffeach, Erwin	Publish
2	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	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 December 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 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.	Laffeach, Erwin	Publish
3	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	14	Deletion	We suggest deleting the 1st sentence of paragraph (2)(ii) within "General conditions – all waiver applications". ECB could use the internal monitoring reports referred to in this paragraph 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.	Laffeach, Erwin	Publish
4	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	14	Clarification	Reference is made to the 3rd sentence of paragraph (2)(ii) within "General conditions – all waiver applications". The identification of obstacles to the free transfer of funds should be aligned with the wording of Commission Delegated Regulation (EU) 2015/61: - Under article 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* ." - Under article 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.	Laffeach, Erwin	Publish
5	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	15	Deletion	We suggest deleting the end of the 2nd sentence of paragraph (4)(ii) within "General conditions – all waiver applications", namely “[…] *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 the applying bank would be required to support the evidence of free movement of funds evidence and the absence of conditions that would limit or prevent it 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". (*) European Commission, Legal Obstacles to the Free Movement of Funds between Institutions within a Single Liquidity Sub-Group, Report from the Commission to the European Parliament and the Council (COM 2014/327final, 5 June 2014.)	The legal opinion requirement is not expressly stated in Article 8 CRR (nor article 7 CRR) whereas it generates burdensome tasks	Laffeach, Erwin	Publish
6	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	15	Deletion	In line with the above comments, we also suggest deleting paragraph (5)(i) within "General conditions – all waiver applications" The proposal maintains that the applying bank would be required to support the evidence of free movement of funds evidence and the absence of conditions that would limit or prevent it 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 "r*eview 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* ". (*) European Commission, Legal Obstacles to the Free Movement of Funds between Institutions within a Single Liquidity Sub-Group, Report from the Commission to the European Parliament and the Council (COM 2014/327final, 5 June 2014.)	The legal opinion requirement is not expressly stated in Article 8 CRR (nor article 7 CRR) whereas it generates burdensome tasks	Laffeach, Erwin	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
7	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	16	Deletion	Reference is made to paragraph (5)(iv) within "General conditions – all waiver applications". 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 deleting this part. This constraint is not enforceable as the resolution plan is in SRB’s remit.	This constraint is not enforceable as the resolution plan is in SRB’s remit.	Laffeach, Erwin	Publish
8	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	16	Amendment	Reference is made to "Further specifications – waiver of the NSFR requirement" There should be only one six-month 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-month 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 time 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.	Laffeach, Erwin	Publish
9	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	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.	Laffeach, Erwin	Publish
10	Section II, Chapter 1, 4. LIQUIDITY WAIVERS	18	Amendment	A letter signed by the parent undertaking’s CEO, with approval from the management body appear to us as an unnecessary burden which is considerable for large groups with a substantial number of subsidiaries. It can be viewed as a deterrent measure. The requirement of execution by parent undertaking’s CEO with approval from the management body seems too restrictive.	The requirement of execution by parent undertaking’s CEO with approval from the management body seems too restrictive.	Laffeach, Erwin	Publish
11	Section: II, Chapter 2, 3. CLASSIFICATION OF SUBSEQUENT ISSUANCES AS COMMON EQUITY TIER 1 INSTRUMENTS (Article 26(3) of the CRR)	22	Amendment	The notification procedure is cumbersome, especially in jurisdictions 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.	To avoid unnecessary administrative burden in jurisdictions where it is not relevant.	Laffeach, Erwin	Publish
12	Section: II, Chapter 2, 7. CALCULATION OF THE TRIGGER OF ADDITIONAL TIER 1 INSTRUMENTS ISSUED BY SUBSIDIARY UNDERTAKINGS ESTABLISHED IN A THIRD COUNTRY (Article 54(1)(e) of the CRR)	24	Amendment	As in other processes of approval by the authorities, 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 (especially given that the ECB intends to consult the EBA to confirm the assessment of equivalence, which can lengthen the whole process), 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.	To ensure that an answer from the ECB is received within a reasonable timeframe, in line with other approval processes of the same kind.	Laffeach, Erwin	Publish
13	Section: II, Chapter 2, 8. REDUCTION OF OWN FUNDS: EXCESS CAPITAL MARGIN REQUIREMENT (Article 78(1)(b) of the CRR)	24	Amendment	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 Own Funds / Eligible Liabilities / leverage trajectories on. We understand that the different Own Funds / Eligible Liabilities / 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.	To ensure consistency with regulatory requirements	Laffeach, Erwin	Publish
14	Section II, Chapter 3, 4. MATURITY OF EXPOSURES (art 162 of the CRR)	29	Amendment	Even though this is a not revision compared to previous ECB Guide, we would like ECB to consider allowing the usage of the effective maturity. Indeed, we note the change of philosophy concerning the mandatory general roll-out towards advanced model. We observe the growing size of the IRB-F portfolio in particular with the coming implementation of the finalisation of Basel III, and the growing impact of not allowing the usage of the effective maturity in particular for short term exposures and diversified banks. We also understand that a change in level 1 text has been supported by the EBA (cf. response to the Call for Advice).	Growing impact of not allowing the usage of the effective maturity under F-IRB in the context of the finalisation of Basel III	Laffeach, Erwin	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
15	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. 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.	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	Laffeach, Erwin	Publish
16	Section: II, Chapter 6, 5.COMPLIANCE WITH LIQUIDITY REQUIREMENTS (Article 414 of the CRR),	42	Deletion	Reference is made to the following statement, “*In general credit institutions are expected to comply with the reporting requirement at all times*” We believe that this statement is not related to the topic of options & discretions which is at stake in the document and that it should therefore be withdrawn.	We think the statement concerned is not related to the topic of options & discretions which is at stake in the document and should therefore be withdrawn.	Laffeach, Erwin	Publish
17	Section: II, Chapter 6, 8. HIGHER OUTFLOW RATES (Article 25(3) of Commission Delegated Regulation (EU) 2015/61)	44	Amendment	We suggest fully aligning the ECB Guide vocabulary with the CRR and Delegated Regulation. As an illustration “aggressive marketing policies” is not used neither in the CRR nor in the Delegated Regulation (Article 25(2)), and is not defined which would lead to mis-	Consistency with the level 1 and level 2 texts should be ensured	Laffeach, Erwin	Publish
18	Section: II, Chapter 8, 1. WAIVER FROM REPORTING REQUIREMENTS FOR DUPLICATIVE DATA POINTS	61	Amendment	It is stated in the draft ECB Guide that “*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 do not understand the point of this chapter and think that it could be withdrawn from the Guide. There is no evidence demonstrating that duplicative reporting is very rare as stated in this paragraph. We believe that banks should not be limited in the use of waivers in such cases of data point duplication in reporting requirements when they deem it appropriate	Streamlining of reporting tasks, limiting the administrative burden for reporting banks Therefore, banks should not be limited in the use of the waiver when they deem it appropriate	Laffeach, Erwin	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 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	Section II, Article 12a Required stable funding factors for off-balance-sheet exposures	Amendment	We suggest amending this part as it is not aligned with the level 1 text: it is not consistent to apply the 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. LCR and NSFR rates are not based on the same rationale. LCR outflow rates and RSF factors should reflect the specific objective and assumptions of these respective metrics	LCR outflow rates and RSF factors should not be aligned and reflect the objective and assumptions of these metrics and an alignment should be ensured with the level 1 text.	Laffeach, Erwin	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

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					Laffeach, Erwin	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

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					Laffeach, Erwin	Publish