



Public consultation

on draft revisions to the ECB's options and discretions policies

Questions and answers

1 What are options and discretions? What has the ECB published in relation to their exercise?

The banking law of the European Union (the Capital Requirements Regulation (CRR), Capital Requirements Directive (CRD) and delegated acts) grants supervisors the authority to exercise various options and discretions (O&Ds) when supervising banks. Some O&Ds are of a general nature, meaning that the supervisor sets a policy that applies to all banks under its supervision without an additional specific assessment for each bank. Conversely, other O&Ds apply on a case-by-case basis. This means the supervisor exercises the option or discretion only after a bank-specific assessment, usually following the submission of an application by the bank in question.

In 2016 and 2017, the ECB published a set of policy instruments harmonising how O&Ds are exercised in relation to significant institutions (SIs) and promoting the harmonised exercise of O&Ds by the national competent authorities (NCAs) in relation to less significant institutions (LSIs).

The ECB's policies are set out in four O&D instruments:

- a [Guide](#), first published in 2016, containing policy guidance for Joint Supervisory Teams to follow when assessing individual applications by SIs in relation to the exercise of O&Ds applicable on a case-by-case basis;
- an [ECB Regulation](#), adopted in 2016, in which the ECB exercises several O&Ds of a generally applicable nature in relation to SIs;
- an [ECB Recommendation](#), published in April 2017, addressed to NCAs in respect of the exercise of O&Ds applicable on a case-by-case basis for LSIs or for which a common approach specific to LSIs is warranted;
- an [ECB Guideline](#), also published in April 2017 and addressed to NCAs, concerning the exercise of O&Ds of a generally applicable nature in relation to LSIs.

The purpose of publishing these documents is to ensure transparency in fostering the harmonisation of supervisory practices and the consistent application of standards of supervision for credit institutions within the Single Supervisory Mechanism.

2 What is the ECB consulting on and why?

In this consultation, the ECB is proposing several updates and amendments to the four O&D instruments mentioned in the answer to the first question (above). Most of the changes that the ECB is proposing are needed because of changes to EU banking law introduced since these policy instruments were first published in 2016-17. Most notably, Regulation (EU) 2019/876 (CRR II) and Directive (EU) 2019/878 (CRD V) introduced some new O&Ds into the EU legislative framework while amending or removing others. These legislative changes require certain consequential changes to be made to the O&D instruments. In addition, the ECB is proposing to introduce some changes to the O&D instruments on the basis of the experience that it has gained in the supervision of banks since the adoption of the O&D instruments in 2016-17.

3 What are the main changes you are proposing to introduce?

The consultation package is a comprehensive update of the four O&D instruments mentioned in the answer to the first question (above). In total, the ECB is proposing new or revised policy guidance in relation to 56 specific O&Ds assigned to competent authorities in EU banking legislation. The ECB is also proposing to remove policies and guidance in relation to a further 16 O&Ds, in many cases because the option or discretion in question no longer exists in EU banking law.

The largest number of proposed revisions relate to O&Ds in the application of liquidity requirements, specifically the net stable funding ratio (NSFR) and the liquidity coverage ratio (LCR). The relatively large number of liquidity-related policies is due to the fact that the CRR II introduced the NSFR as a new liquidity requirement for banks, applicable as of 28 June 2021. There are also several amendments relating to amendments to Delegated Regulation (EU) 2015/61 (LCR Delegated Regulation) that were introduced in 2018 and became applicable on 30 April 2020.

The consultation also contains new or revised policies relating to O&Ds in various other parts of the CRR and CRD. This includes, for instance, permissions for banks seeking to reduce their capital, the treatment of certain exposures in the calculation of the leverage ratio, and some exemptions from the large exposures limit.

4 Can you explain why you use different legal instruments to harmonise the exercise of options for the purposes of supervising SIs and LSIs?

The use of different legal instruments to harmonise the exercise of options for the purposes of supervising SIs and LSIs can be explained by the distribution of responsibilities between the ECB and the NCAs within the SSM. While SIs are subject to the direct supervision of the ECB, LSIs are directly supervised by the NCAs.

For SIs, the ECB decided in 2016 to use two distinct instruments: an ECB Regulation and an ECB Guide. Regulations are adopted by the ECB to implement specific policies relating to the prudential supervision of credit institutions. The ECB chose this legal instrument to exercise, vis-à-vis SIs, the O&Ds available in Union law that are of a generally applicable nature. The ECB Guide is a non-binding instrument that provides guidance to Joint Supervisory Teams on how to assess, on a case-by-case basis, individual requests that would involve the exercise of an option or a discretion.

As regards LSI supervision, the ECB may, as part of its overarching role of oversight over the functioning of the system of European banking supervision (which comprises the ECB and the national banking supervisors of the participating countries), issue guidelines to NCAs, in accordance with which supervisory tasks are to be performed and supervisory decisions adopted by them. The ECB made use of this power to harmonise the exercise of generally applicable O&Ds for the purpose of LSI supervision. By contrast, the ECB issued a (non-binding) recommendation to NCAs on the specifications to be applied in their case-by-case assessment of applications received from LSIs in relation to specific O&Ds.

5 [Are there cases of O&Ds where the policy for SIs and LSIs will differ? Which criteria did the ECB consider when deciding whether to apply the same policies to LSIs as adopted for SIs?](#)

When developing the ECB Recommendation and the ECB Guideline, the ECB was guided by the principle that the same prudential rules should apply for the same risk exposure. At the same time, the ECB paid particular attention to the principle of proportionality, i.e. to what extent a different policy for LSIs may be warranted for the exercise of specific options.

The ECB developed the revised O&D policies for SIs and LSIs taking these considerations into account and working in close cooperation with the NCAs. Reflecting this unified policy development process, the amending ECB Guideline and amending ECB Recommendation submitted for consultation propose that for almost all of the new or revised O&Ds, the policy adopted by NCAs for LSIs should be the same as the policy that will be adopted by the ECB for SIs. For two specific O&Ds, concerning reductions of own funds (Article 78(1) of the CRR), a specific treatment for LSIs has been provided in the draft amending ECB Recommendation. In these two cases the policy for LSI supervision generally follows the same rationale as the policy developed for SIs. However, certain adjustments have been made to account for the specificities of the LSI sector, such as omitting the references to requirements applicable to global systemically important institutions as they are not relevant.