EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Public consultation

Draft guideline on the exercise of options and discretions available in Union law by NCAs in relation to less significant institutions

Draft recommendation on common specifications for the exercise of some options and discretions available in Union law by NCAs in relation to less significant institutions

Template for comments

Contact details (will not be published)

Institution/Company

German Banking Industry Committee

Contact person

Mr ☒ Ms ☐

First name

Felix

Surname

Krohne

E-mail address

[redacted]

Telephone number

[redacted]

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

Please make sure that each comment only deals with a single issue.

In each comment, please indicate:

- the document to which the comment refers (guideline and/or recommendation)
- the relevant article/chapter/paragraph, where appropriate
- whether your comment is a proposed amendment, clarification or deletion.

If you require more space for your comments, please copy page 2.

Public consultation

Draft guideline on the exercise of options and discretions available in Union law by NCAs in relation to less significant institutions

Draft recommendation on common specifications for the exercise of some options and discretions available in Union law by NCAs in relation to less significant institutions

Template for comments

Name of Institution/Company German Banking Industry Committee

Country Germany

Comments

Guideline	Recommendation	Issue	Article	Comment	Concise statement of why your comment should be taken on board
☒	☐	Article 478(3)(a) and (b) of Regulation (EU) No 575/2013: applicable	9	Deletion	We understand the wish for harmonisation. Nevertheless, we oppose the ECB's choice to overrule the decision of the national competent authorities, e.g. Germany's BaFin, concerning the transitional periods for deferred tax liabilities. The ECB

		percentages for deduction from Common Equity Tier 1 items of significant investments in financial sector entities and deferred tax assets that rely on future profitability		shortened the transitional period for deferred tax liabilities that arose before 1 January 2014. We believe that the option given to the national competent authority should be respected.
☐	☒	Article 129(1) of Regulation (EU) No 575/2013: exposures in the form of covered bonds	Deletion	Covered bonds and supervision of covered bonds are subject to German law. In its comments of 29 January 2016 on the European Commission's consultation paper concerning a possible harmonisation of covered bond laws in the EU, the ECB opposed direct European supervision of covered bonds. Furthermore, according to Art. 129 (1) of the CRR, the national competent authority is already obligated to consult with the EBA on its decision. That is why the option in Art. 129 (1) (c) of the CRR should be exercised by the national competent authority. We suggest deleting the recommendation in question. At the very least, it should be clarified that the national competent authority is in charge and that the ECB is only to be consulted.
☐	☒	Article 422(8) of Regulation (EU) No 575/2013 and Article 29 of Delegated Regulation (EU)	Deletion	Section II, Chapter 6, paragraph 11 of the ECB Guide requires institutions to show the ECB that liquidity positions are monitored on a daily basis. We suggest requiring, at most, reciprocal disclosure of the reported LCRs. LSIs should not be burdened with daily monitoring of counterparty liquidity

		2015/61: intragroup liquidity outflows (Outflows within a group or an institutional protection scheme)		positions.
☐	☒	Article 8(1) of Delegated Regulation (EU) 2015/61: diversification of holdings of liquid Assets	Deletion	Section II, Chapter 6, paragraph 5 of the ECB Guide requires institutions to diversify their holdings of liquid assets if, on aggregate, covered bonds represent more than 60% of the total amount of liquid assets net of applicable haircuts. We suggest completely dispensing with application of this rule to LSIs. We believe the German Minimum Requirements for Risk Management (MaRisk) and the requirements of Art. 8 (1) of Delegated Regulation EU/2015/61 are sufficient to ensure diversification of liquidity coverage. There are only a few possible liquidity positions that fulfil the liquidity coverage requirements. Therefore, LSIs are unable to further diversify their holdings of liquid assets.
☐	☒	Article 25(3) of Delegated Regulation (EU) 2015/61: higher outflow rates	Deletion	Section II, Chapter 6, paragraph 9 of the ECB Guide imposes under certain circumstances higher outflow rates for riskier retail deposits than those set out in Regulation EU/2015/61. LSIs neither have a dominant position nor do they offer products that require aggressive marketing policies to refinance the deposits. It should be clarified and ensured that the competent authority sticks to the thresholds for internal simulation of LCR already set out in Art 25 (3) of Regulation EU/2015/61. The differentiated

				application of outflow rates for the different risk classes according to Art. 25 (3) of Regulation EU/2015/61 should be retained. (risk class 1: outflow rates between 10% and 15%; risk class 2: outflow rates between 15% and 20%)
☐	☒	Article 30(2) of Delegated Regulation (EU) 2015/61: additional collateral outflows from downgrade triggers	Amendment	Section II, Chapter 6, paragraph 12 of the ECB Guide addresses additional collateral outflows caused by a downgrade in a credit institution's external credit assessment. We suggest that the materiality threshold should be adjusted to bring it into line with established practice at LSIs. Therefore, the threshold should not be 1% of the gross liquidity outflows. In the absence of a definition of materiality of outflows in the LCR Delegated Regulation, institutions often rely on the definitions set in Art. 423 (3) of the CRR or in the final draft of RTS 2014/05. Applying the definition according to Art. 423 (3) of the CRR to Art. 23 of the LCR Delegated Regulation results in a materiality of outflows if the total of notional amounts of such contracts exceeds 10% of the net Liquidity Coverage Requirement outflows. See page 6 of final draft RTS 2014/05: "For the purposes of these draft RTS, a derivative portfolio is deemed material if the total of notional amounts of such contracts exceeds 10% of the net Liquidity Coverage Requirement outflows. Institutions with derivative portfolios below this threshold are excluded from the application of these RTS."
☐	☒	Article 49(1) of Regulation (EU) No 575/2013:	Clarification	Section II, Chapter 2, paragraph 4 (i) of the ECB Guide stipulates that in cases where permission for non-deduction has already been granted by the national competent authority prior to 4 November 2014, credit institutions may continue not to

		deduction of insurance holdings		deduct the relevant holdings on the basis of that permission, provided appropriate disclosure requirements are met. Relying on the time of permission is not considered to be appropriate. Instead, the time of submission of the request for non-deduction to the national competent authority should be relevant, since credit institutions cannot influence the process time and since they are required to provide proof of compliance with the regulatory rules when they submit such request. With the protection of legitimate expectations in mind, institutions should be able to trust in and rely on already granted permissions.
☐	☒	Article 91(6) of Directive 2013/36/EU: additional non-executive directorship	Clarification	Section II, Chapter 11, paragraph 5 of the ECB Guide stipulates that national competent authorities can authorise members of the management body of a less significant credit institution to hold an additional non-executive directorship, in accordance with Article 91 (6) of CRD IV. However, it should be clarified that the limit on mandates stated in Art. 91 (3) of CRD IV applies only to significant institutions. There is no limit on mandates for less significant institutions in CRD IV. Therefore, the basis for granting an additional mandate in the case of LSIs can only be a

					limit set under national law (e.g. Section 25d (3)(a) of the German Banking Act (KWG))
☒	☐	Large exposures: use of exemptions under Article 400 (2) of Regulation (EU) No 575/2013	6	Clarification	We understand the intention to harmonise the exercise of the option with regard to exemptions provided for in Article 400(2) of the CRR for significant and less significant institutions. However, we wish to again make clear that we oppose the exemption of exposures from the application of Art. 395 (1) of the CRR for only 80% of the nominal value of covered bonds, as envisaged by Art. 9 of Regulation EU/2016/445, since this deviates from the rules set at Level 1. Level 1 grants full exemption. We have already mentioned our concerns in our comments on the draft of Regulation EU/2016/445. Furthermore, the European Commission did not deviate from the existing Regulation in its CRR II proposal and did not propose a threshold. We therefore again request that there should be no deviation from Level 1 and that Art. 9 of Regulation EU/2016/445 should be amended accordingly.
☐	☐			Choose one option	
☐	☐			Choose one option	
☐	☐			Choose one option	

☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option
☐	☐	Choose one option