



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

GUIDELINE (EU) [YYYY/[XX*]] OF THE EUROPEAN CENTRAL BANK

of [date Month] 2016

**on the exercise of options and discretions available in Union law by national competent
authorities in relation to less significant institutions**

([ECB/YYYY/XX])

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions¹ and in particular Article 6(1), and Article 6(5)(a) and (c) thereof,

Whereas:

- (1) The European Central Bank (ECB) is responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM). It oversees the functioning of the system to ensure the consistent application of high supervisory standards and the consistency of supervisory outcomes across the participating Member States. The ECB may issue guidelines to national competent authorities (NCAs), in accordance with which supervisory tasks are to be performed and supervisory decisions are to be adopted by NCAs.
- (2) The ECB has to ensure the consistent application of prudential requirements for credit institutions within the participating Member States, under Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)².
- (3) As the competent authority to do so under Regulation (EU) No 1024/2013, the ECB has exercised a number of options and discretions available in Union law under Regulation (EU) 2016/445 of the European Central Bank (ECB/2016/4)³ for credit institutions that are classified as significant.

* This number will be allocated by the Publications Office of the European Union when the Guideline is published in the Official Journal.

¹ OJ L 287, 29.10.2013, p. 63.

² Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/ 2014/17) (OJ L 141, 14.5.2014, p. 1).

³ Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

- (4) Although NCAs are primarily responsible for exercising the relevant options and discretions in relation to less significant institutions, the ECB's overarching oversight role within the SSM enables it to promote the consistent exercise of options and discretions in relation to both significant and less significant institutions, where appropriate. This ensures that (a) the prudential supervision of all credit institutions in the participating Member States is implemented in a coherent and effective manner, (b) the single rulebook for financial services is applied consistently to all credit institutions in the participating Member States, and (c) that all credit institutions are subject to supervision of the highest quality.
- (5) With the aim of balancing the need for the consistent application of supervisory standards between significant and less significant institutions on the one hand with the application of the principle of proportionality on the other hand, the ECB has identified certain options and discretions among those it exercised in Regulation (EU) 2016/445 (ECB/2016/4) which should be exercised in the same way by NCAs in the supervision of less significant institutions.
- (6) Options and discretions granted to competent authorities with reference to own funds and capital requirements under Articles 89(3), 178(1)(b) and 282(6) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴, as well as under the transitional provisions provided for in Article 471(1) and Article 478(3)(a) and (b) of the same Regulation, have an impact on the level and quality of regulatory own funds and the capital ratios of less significant institutions. A prudent and consistent application of these options and discretions is necessary for several reasons. It will ensure that (a) the risks related to qualifying holdings outside the financial sector are adequately addressed, (b) the definition of default is used in a consistent manner with regard to the adequacy and comparability of own funds requirements, and (c) that own funds requirements for transactions with a non-linear risk profile or for payment legs and transactions with debt instruments as underlying for which the institution cannot determine the delta or the modified duration are calculated in a prudent way. The harmonised application of transitional provisions related to the deduction of equity holdings in insurance companies and deferred tax assets will ensure that the more rigorous definition of regulatory capital introduced by Regulation (EU) No 575/2013 is implemented by all credit institutions in the participating Member States within an adequate period of time.
- (7) Options and discretions in relation to the exemption of exposures from the application of the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013 should be consistently applied to both significant institutions and less significant institutions to establish a level playing field for credit institutions in the participating Member States, limit concentration risks arising from specific exposures, and ensure that the same minimum standards are applied across the SSM for the assessment of compliance with the conditions specified in Article 400(3) of the same Regulation. In particular, concentration risks arising from covered bonds falling within the terms of Article 129(1), (3) and (6) of Regulation (EU) No 575/2013 and exposures to or guaranteed by regional governments or local authorities of Member States, where those claims would be assigned

⁴ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

a 20 % risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013, should be limited. For intragroup exposures, including participations or other kinds of holdings, it needs to be ensured that the decision to fully exempt these exposures from the application of the large exposure limits is based on a thorough assessment as specified in Annex I to Regulation (EU) 2016/445 (ECB/2016/4). The application of common criteria for the assessment of whether an exposure, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network, meets the conditions for an exemption from the large exposure limits as specified in Annex II to Regulation (EU) 2016/445 (ECB/2016/4) is warranted. Such application should ensure that significant and less significant institutions associated in the same network are treated in a consistent way. The exercise of the option provided for in Article 400(2) of Regulation (EU) No 575/2013 as set out in this Guideline should only apply if the relevant Member State has not exercised the option provided for in Article 493(3) of Regulation (EU) No 575/2013.

- (8) Options and discretions granted to competent authorities under Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61⁵ for the calculation of outflows from stable retail deposits covered by a deposit guarantee scheme (DGS) in order to calculate liquidity coverage requirements should be consistently exercised for significant and less significant credit institutions in order to ensure identical treatment of credit institutions in the same DGS,

HAS ADOPTED THIS GUIDELINE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Guideline specifies certain of the options and discretions of general application conferred on competent authorities under Union law concerning prudential requirements, the exercise of which by the NCAs in relation to the less significant institutions shall be fully aligned to the ECB's exercise of the relevant options and discretions in Regulation (EU) 2016/445 (ECB/2016/4).

Article 2

Definitions

For the purposes of this Guideline, the definitions contained in Article 4 of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013, Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) and Article 3 of Delegated Regulation (EU) 2015/61 shall apply.

⁵ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 11, 17.1.2015, p.1).

*CHAPTER II***EXERCISE OF OPTIONS AND DISCRETIONS IN RELATION TO LESS SIGNIFICANT INSTITUTIONS
REQUIRING FULL ALIGNMENT WITH THE LAW APPLICABLE TO SIGNIFICANT INSTITUTIONS***SECTION I****Own funds****Article 3***Article 89(3) of Regulation (EU) No 575/2013: risk weighting and prohibition of qualifying holdings
outside the financial sector**

NCA shall exercise the option with regard to risk weighting and prohibition of qualifying holdings outside the financial sector provided for in Article 89(3) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 3 of the Regulation (EU) 2016/445 (ECB/2016/4).

*SECTION II****Capital requirements****Article 4***Article 178 (1)(b) of Regulation (EU) No 575/2013: default of an obligor**

NCA shall exercise the option with regard to the default of an obligor provided for in Article 178(1)(b) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 4 of Regulation (EU) 2016/445 (ECB/2016/4).

*Article 5***Article 282(6) of Regulation (EU) No 575/2013: hedging sets**

NCA shall exercise the option with regard to hedging sets provided for in Article 282(6) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 5 of Regulation (EU) 2016/445 (ECB/2016/4).

*SECTION III***Large exposures***Article 6***Article 400(2) of Regulation (EU) No 575/2013: exemptions**

NCA shall exercise the option with regard to exemptions provided for in Article 400(2) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 9 of Regulation (EU) 2016/445 (ECB/2016/4), including the related Annexes.

*SECTION IV***Liquidity***Article 7***Article 24(4) and (5) of Delegated Regulation (EU) 2015/61: outflows from stable retail deposits**

NCA shall exercise the option with regard to outflows from stable retail deposits provided for in Article 24(4) and (5) of Delegated Regulation (EU) 2015/61 in relation to less significant institutions in accordance with Article 13 of Regulation (EU) 2016/445 (ECB/2016/4).

*SECTION V***Transitional provisions of Regulation (EU) No 575/2013***Article 8***Article 471(1) of Regulation (EU) No 575/2013: exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items**

NCA shall exercise the option with regard to the exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items provided for in Article 471(1) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 16 of Regulation (EU) 2016/445 (ECB/2016/4).

*Article 9***Article 478(3)(a) and (b) of Regulation (EU) No 575/2013: applicable 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**

NCA shall exercise the option with regard to the applicable 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 provided for in Article 478(3)(a) and (b) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with Article 19 of Regulation (EU) 2016/445 (ECB/2016/4).

CHAPTER III
FINAL PROVISIONS

Article 10

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCAs.
2. The NCAs shall comply with this Guideline from 1 January 2018, except for Article 7 which they shall comply with from 1 January 2019.

Article 11

Addressees

This Guideline is addressed to the NCAs of participating Member States.

Done at Frankfurt am Main, [date month YYYY].

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI