



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

PUBLIC CONSULTATION

Draft ECB Regulation on the exercise of options and discretions available in Union law

Draft ECB Guide on options and discretions available in Union law

Template for comments

Institution/Company

Deutsche Bank

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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 (Regulation and/or Guide)
- 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 ECB Regulation on the exercise of options and discretions available in Union law

Draft ECB Guide on options and discretions available in Union law

Template for comments

Name of Institution/Company Deutsche Bank

Country Germany

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
<input checked="" type="checkbox"/>	<input type="checkbox"/>	publication of equivalent list	12	Clarification	<p>Request for clarification: Article 12 (3) the ECB shall determine the conditions under which a liquidity coverage requirement is considered equivalent to the liquidity coverage ratio specified in Delegated Regulation (EU) 2015/61, taking into account any relevant assessments of equivalence conducted by the European Banking Authority and the European Commission.</p> <p>Will this equivalent list be published?</p>



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<input checked="" type="checkbox"/>	<input type="checkbox"/>	unclarity on practical implementation	12	Clarification	<p>Request for clarification: Article 12 (4) – The ECB may review the criteria for eligibility of level 1 assets provided for in paragraph 2(e) within one year from the entry into force of this Regulation.</p> <p>We have a question where more clarity would be beneficial when applying this in practical terms. Would there be a transition period for assets no longer deemed eligible? This could lead to difficulties for certain legal entities if the eligibility criteria changed and compliance was required within a short timeframe</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	criteria to define major stock indices	13	Clarification	<p>Request for clarification: We would appreciate more clarity on the criteria the ECB will use to define 'major stock index'? When will this be published? Furthermore, will the ECB define EU indices or global major indices?</p> <p>Argumentation: It is unclear why the ECB have chosen to move away from the existing Delegated Act wording</p> <p>"Article 12 1 (c) shares, provided that they meet all of the following requirements: they form part of a major stock index in a Member State or in a third country, as identified as such for the purposes of this point by the competent authority of a Member State or the relevant public authority in a third country. In the absence of any decision from the competent authority or public authority in relation to major stock indexes, credit institutions shall regard as such a stock index composed of leading companies in the relevant</p>



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					jurisdiction;"
<input type="checkbox"/>	<input checked="" type="checkbox"/>	too ambiguous text on capital waivers (art 7, (1))	7	Deletion	<p>Request for deletion: We would request the ECB to delete the phrase "(v) the SREP for the parent institution does not show deficiencies in the area of internal governance and risk management."</p> <p>Argumentation: This text is would benefit from further guidance on definitions on the term deficiencies.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Documentation related to Article 7(3) waivers - inconsistency of requirements with CRR	7	Clarification	<p>Request for clarification: Clarification would be appreciated on that the third country confirmation requirement only applies if this country is officially recognized by the EU as equivalent third country.</p> <p>Argumentation: The requirements with regard to subsidiaries established in non-EEA countries are not consistent with Art.7(3) item (i) (see above) (unless official EU recognition of the equivalence of the third country). The free transfer of own funds from those countries should not be relevant if the funds cannot be taken into account for the fulfillment of Art. 7(3)(a) CRR.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Liquidity waivers, art 8 CRR, at the national level: intransparency of SREP scores	8	Deletion	<p>Request for deletion: Page 10 section 4 Para 1 (iii) We request the ECB to delete the phrase "A liquidity position would be considered to be sound if the consolidating institution has received a score of at least 2 or higher in the SREP liquidity assessment over the past two years."</p>



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Argumentation:

The criteria for a 2 score are not transparent and subject to very broad interpretation and judgment depending on the individual supervisory team. It is difficult to foresee how the ECB can guarantee a consistent application of supervisory judgment across the range of firms it supervises and the number of teams who conduct the audits. It is also not clear what would happen should firms lose their '2' rating – would this result in the waiver being automatically withdrawn? (For SREP '2' score criteria see pages 155 & 166 of the EBA SREP Guidelines)

Furthermore, given that the SREP process is new and yet to be fully implemented, the proposals do not consider what would happen if SREP scores were not available for the preceding two years. We propose to adjust the guidance in order for these situation to take into account and provide interim solutions to account for the time lag between the beginning of the SREP process and the waiver requirements.

Request for clarification:

Section 4 Para 3 (i)

"The contracts concluded between entities which are part of the liquidity sub-group, which do not provide for any amount or any time-limit or which provide for a time-limit that exceeds the validity of the waiver decision by at least six months". The wording is unclear.

Argumentation:



unclear wording on
art 8

8

Clarification



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					<p>If the contracts do not provide any amount, then theoretically these legal contracts could be imposing open ended exposures without limits – this would severely impact the LCR calculation as the potential exposure to another entity within the sub-group is limitless whilst credit institutions have finite HQLA resources.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	wording on waivers at the cross border level is too inspecific	8	Deletion	<p>Request for deletion: We would request deletion of the phrase "and that the liquidity management of the institution as evaluated in the SREP is deemed to be of a high quality."</p> <p>Argumentation: 'The SREP is deemed to be of high quality' is a broad and ambiguous term and should be further clarified by the ECB.</p> <p>The criteria for high SREP scores are not transparent and subject to a high degree of supervisory judgment. There is no plausible way that the ECB can guarantee consistent outcomes therefore such a measure should not be used as the basis for granting waivers.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	EXCLUSION OF CONSOLIDATION (Article 19(2) of the CRR) incorrect reference to Basel as legal basis	19	Deletion	<p>Request for deletion: We would request to delete the references to Basel in these paragraphs: - "and the Basel Committee standards" - "and paragraph 26 of Basel II 14;"</p> <p>Argumentation: Basel standards do not contain directly applicable law and it would therefore not be appropriate to include this reference in the Guide.</p>



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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Deduction of insurance holdings (art 49(1)): unclarity on appropriate disclosure requirements	49	Clarification	<p>Request for clarification: Could the ECB clarify what are the “appropriate disclosure requirements”?</p> <p>Argumentation: This statement seems to lack a basis in the CRR. Can the ECB clarify which existing disclosure requirements are referenced here?</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	REDUCTION OF OWN FUNDS: EXCESS CAPITAL MARGIN REQUIREMENT (Article 78(1)(b) of the CRR) clarifying text via amending	78	Amendment	<p>Request for amendment: “The ECB determines [...] whether the institution continues to exceed the capital requirements set out in the applicable SREP Decision after the reduction of own funds” [...]</p> <p>should be changed to;</p> <p>“The ECB determines [...] whether the institution continues TO MEET the capital requirements set out in the applicable SREP Decision after the reduction of own funds”.</p> <p>Argumentation: The revised wording takes into account that Art. 78(1)(b) CRR does not set out a general requirement to hold own funds in addition to the SREP Decision (i.e. the requirement to exceed the SREP requirements is unjustified and excessive).</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	application of the minimum value of 1.4	284	Clarification	<p>Request for clarification: We would seek clarification that where permission to use an own estimate of alpha is granted, the minimum value of 1.4 does not apply.</p>



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					Argumentation: The language in the proposed guidelines in conjunction with recent context is most likely to be interpreted requiring a minimum value of 1.4 even where the ECB has given permission to use their own calculation of alpha.
					Request for amendment: In order to make this clearer in the guidelines, we would also propose a change to the following: "The ECB intends to assess the necessity of requiring a higher α factor than 1.4 for the purpose of calculating the exposure value pursuant to Article 284(4) of the CRR, on a case-by-case basis depending on model deficits or model risk. THIS DOES NOT PREVENT α FROM BEING LESS THAN 1.4 IF THE ECB HAS PERMITTED AN INSTITUTION TO CALCULATE ITS OWN VALUE OF α PER ARTICLE 284(9). Moreover, it considers that, for prudential purposes, α should in principle be the value stipulated in the said paragraph."
<input type="checkbox"/>	<input checked="" type="checkbox"/>	application of minimum value of 1.4	284	Amendment	Argumentation: The language in the proposed guidelines in conjunction with recent context is most likely to be interpreted requiring a minimum value of 1.4 even where the ECB has given permission to use their own calculation of alpha.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Calculation of the VaR number (art 366 (4) of the CRR); allow limitation to	366	Amendment	Request for amendment: We would like to amend the following: "The ECB is of the view that the calculation of the addend for the purpose of calculating the capital requirement referred to in Articles



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backtesting where overshootings arise from P/L effects

364 and 365 of the CRR should IN PRINCIPLE be based on hypothetical and actual changes in the portfolio value, according to the specifications set out in Article 366(3). HOWEVER, ON A CASE BY CASE BASIS, APPLYING THE LIMITATION BASED ON ART 366 (4) CAN BE GRANTED OF OVERSHOOTINGS ARE NOT THE RESULT OF DEFICIENCIES OF INTERNAL MODELS"

Argumentation:

The extension of the backtesting addend automatically to overshootings arising from losses in actual p&l is not merited where the p&l is driven by factors that are not intended to be captured or capitalised through the VaR model.

Actual outliers are not good reflections on the performance of the underlying VaR model, which is appropriately represented by hypothetical backtesting. Examples of p&l which is captured through actual p&l but not Hypo p&l or the VaR model would be CVA, DVA and their hedges. These are excluded by design from the VaR model and are captured through other capital charges or deductions.

For the addend to be driven by these factors, where they are capitalised appropriately elsewhere represents an inappropriate double counting of risk through capital.



COMPLIANCE WITH LIQUIDITY REQUIREMENTS (Article 414 of the CRR) unclarity on reporting

414

Clarification

Request for clarification:

Is the ECB no longer willing to authorize the temporary lower reporting frequency/longer reporting delay?

Argumentation:

Article 414 of the CRR – Compliance with liquidity reporting



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requirements

requirements

Where an institution does not meet, or expects not to meet the requirement set out in Article 412 or the general obligation set out in Article 413(1), including during times of stress, it shall immediately notify the competent authorities and shall submit without undue delay to the competent authorities a plan for the timely restoration of compliance. . . . Until compliance has been restored, the institution shall report LCR daily unless the authority authorises a lower reporting frequency and a longer reporting delay.

Competent authorities shall only grant such authorisations based on the individual situation of an institution and taking into account the scale and complexity of the institution's activities. They shall monitor the implementation of the restoration plan and shall require a more speedy restoration if appropriate.

INTRAGROUP LIQUIDITY OUTFLOWS (Article 422(8) and (9) of the CRR) more clarity required on the 1 year requirement

422

Clarification

Request for clarification:

Page 25 (ii a)

"in cases where the LCR is applicable under the legislation in place, the credit institutions are expected to demonstrate that they have been fulfilling their LCR on an individual and a consolidated basis, when applicable, for at least one year and that the credit institution benefiting from preferential treatment reflects the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR;



(b) where national liquidity requirements are in place, the credit institutions are expected to demonstrate that they have been fulfilling their LCR on an individual and a consolidated basis, when applicable, for at least one year."

What is the logic behind this 1 year requirement? Why are firms not enabled to apply preferential treatment to intragroup flows from the date of LCR compliance as opposed to one year later?

How will these proposals be integrated with the output of the EBA Consultation Paper on Cross Border Intragroup Liquidity Provisions under stress (EBA/CP/2015/22)?

Argumentation:

As stated in the preceding paragraph an institution benefitting from preferential treatment would need to have in place plans demonstrating that it would be able to meet a fully phased in LCR in 2018, if the preferential treatment were not to be granted. We would suggest that this would be a sufficient requirement rather than in addition requiring one year compliance

<input type="checkbox"/>	<input checked="" type="checkbox"/>	INTRAGROUP LIQUIDITY OUTFLOWS (Article 422(8) and (9) of the CRR) impracticality of daily access to systems	422	Deletion
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Request for deletion:

Para 4 Point vi

We would like to request to delete the phrase "This could be achieved, where appropriate, via an access to monitoring systems, including daily monitoring systems, established by the liquidity-receiving entity and the liquidity-providing entity on an individual and a consolidated basis. Alternatively"



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						<p>Argumentation: In practical terms, granting the ECB access to daily monitoring systems is a difficult and onerous task and overly invasive. This needs to be further researched.</p> <p>Request for deletion: Page 25 We would like to request to delete the phrase "as evaluated in the SREP is deemed to be of high quality".</p> <p>Argumentation As noted in earlier comments, SREP of high quality is a vague and unambiguous term and should not be utilised in regulation. Given what has been disclosed previously regarding SREP decision criteria, this is also vague, ambiguous and subject to a large degree of supervisory judgment, therefore difficult to impose consistently across the SSM.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	INTRAGROUP LIQUIDITY INFLOWS (Article 425(4) and (5) of the CRR) clarify choice for the 1 year period	425	Clarification		<p>Request for clarification Page 26-27 iii a & b In order to assess whether the liquidity-providing entity exhibits a sound liquidity profile, the credit institution is expected to demonstrate: "(a) where the LCR is already applicable under the existing legislation, that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year. The liquidity-receiving institution is expected to reflect the impact of the preferential treatment and of any exemption granted under Article</p>



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33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR;

(b) where national liquidity requirements are in place, that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year."

Argumentation

As above, we wonder what the logic is behind the 1 year compliance requirement? Why are firms not enabled to apply preferential treatment to intragroup flows from the date of LCR compliance as opposed to one year later?

How will these proposals be integrated with the output of the EBA Consultation Paper on Cross Border Intragroup Liquidity Provisions under stress (EBA/CP/2015/22)?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	INTRAGROUP LIQUIDITY INFLOWS (Article 425(4) and (5) of the CRR) npracticality of daily access to systems	425	Deletion
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Request for deletion:

Para 5 point iv

We would like to request to delete the phrase "This could be achieved, where appropriate, via an access to monitoring systems, including daily monitoring systems, established by the liquidity-receiving entity and the liquidity-providing entity on an individual and a consolidated basis. Alternatively,"

Argumentation:

As above, In practical terms, granting the ECB access to daily monitoring systems is a difficult and onerous task and overly invasive.



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<input type="checkbox"/>	<input checked="" type="checkbox"/>	DIVERSIFICATION OF HOLDINGS OF LIQUID ASSETS (Article 8(1) of Regulation 2015/61) choice for different percentage: 60% instead of 70%	8	Clarification	<p>Request for clarification: "For institutions where covered bonds represent on aggregate more than 60% of the total amount of liquid assets net of applicable haircuts, a diversification requirement should be duly considered in the SREP, and possibly implemented via a SREP decision, to be revised annually."</p> <p>Argumentation: Article 17 of delegated regulation 2015/61 implicitly permits for a threshold of 70% for covered bonds. It is therefore unclear why an additional (and similar restriction) should be imposed. Could the ECB provide further background information on their choice?</p>
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Contact person

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Template for comments

Name of Institution/Company Deutsche Bank

Country Germany

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
<input type="checkbox"/>	<input checked="" type="checkbox"/>	MANAGEMENT OF LIQUID ASSETS (Article 8(3) of Regulation 2015/61) unclear process on waivers	8	Clarification	<p>Request for clarification: According to Article 8(3)(c) of Commission Delegated Regulation (EU) 2015/61, the ECB intends to permit credit institutions to combine the approaches provided for in Article 8(3)(a) and (b) of that Regulation, on a consolidated basis or at the level of the liquidity sub-group, where a waiver has been granted at the individual level.</p> <p>Argumentation:</p>



					<p>The wording in this article is unclear. Could the ECB provide additional information on the prudential reasoning behind this decision? There are currently no restrictions placed by national competent authorities to run a separate pool of assets. Imposing the requirement to apply for a waiver is onerous and unjustified. The discretion to allow firms to operate a combined approach should be exercised on an unconditional basis and not subject to a waiver being granted.</p> <p>In addition, the waiver process is unclear – is this waiver application process captured in existing waivers or will there be a new process?</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	HIGHER OUTFLOW RATES (Article 25(3) of Regulation 2015/61)	25	Clarification	<p>Request for clarification: We are unsure where will the empirical evidence be sourced from? Reg returns/QIS/STE/SREP?</p> <p>Request for clarification Please provide further clarification on 'aggressive marketing policies'. Will this be defined by the ECB or will firms be able to utilise internal definitions?</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	. LIQUIDITY WAIVERS (Article 8 of the CRR)	8	Deletion	<p>Request for deletion Page 9 para 4 – we would like to delete the following phrase: "However, the ECB plans to exclude reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of credit institutions which are in the same Member State as the parent company."</p>



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					Argumentation: Excluding reporting requirements from the waiver removes a major benefit of granting waivers and subjects firms to onerous reporting requirements (even if they are successful with a waiver application).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	INTRAGROUP LIQUIDITY INFLOWS (Article 425(4) and (5) of the CRR)	425	Deletion	Request for deletion: Page 27 - we would like to delete "in the SREP is deemed to be of high quality." Argumentation The term 'of high quality' is a vague and ambiguous term and should not be referenced to in this regulation. Given that little has been disclosed on SREP decision criteria, this is also vague, ambiguous and subject to a large degree of supervisory judgment, therefore difficult to impose consistently across the SSM.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Waivers at the national level	8	Deletion	Request for deletion: Page 10, Para 2) iii we would like to request to delete the phrase "(iii) a description of the liquidity contingency plan for the liquidity sub-group." Argumentation: The liquidity sub group is an EU construction and the Contingency Funding Plan is created at a Group level, mandating the drafting of additional CFPs is an overly excessive requirement which does not generate any practical value or benefit.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Waivers at the	8	Deletion	Request for deletion:



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national level

Page 9 para 4

We would request the ECB to delete "However, the ECB plans to exclude reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of credit institutions which are in the same Member State as the parent company."

Argumentation:

Excluding reporting requirements from the waiver removes a major benefit of granting waivers and subjects firms to onerous reporting requirements (even if they are successful with a waiver application).

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



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<input type="checkbox"/>	<input type="checkbox"/>	Choose one option
<input type="checkbox"/>	<input type="checkbox"/>	Choose one option
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