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

Erste Group Bank AG

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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.

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Template for comments

Name of Institution/Company Erste Group Bank AG

Country Austria

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	☐	Subject matter and scope	1	Amendment	The article specifies that the Regulation should only apply to the credit institutions considered as significant according to the SSM Regulation. We believe that this approach would introduce an unlevel playing field at national level where significant institutions would then be subject to different rules than less significant institutions. This treatment would be particularly harmful for those significant institutions which are essentially domestic institutions without cross-border activities, and which are placed under direct supervision due to their (relative or absolute) size or because they

					have in the past benefitted from government support. In our view accordingly, if the options and discretions were harmonized the new regime should apply to both significant and non-significant institutions.
☒	☐	Article 400(2) of Regulation (EU) No 575/2013: Exemptions	9.2	Clarification	Point 2: „The exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution to the undertaking referred therein shall be fully exempted from large exposures limit established by Article 395(1) of that Regulation ... Article 400(2)(c) (c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country; exposures that do not meet these criteria, whether or not exempted from Article 395(1), shall be treated as exposures to a third party; The current situation is, that based on § 103q (4) (a) (bb) BWG – until a regulation based on Art 507 CRR gets into force – intragrop exposures are exempted from the weightening by applying a zero risk weight (also cross-border downstream and upstream). We deem these exposures – also for SSM-banks – treated under this § 103q BWG in view of Art 9 (7) of this proposed regulation. Is this correct? That means that for these exposures Annex I is of this draft proposed regulation is not applicable. Is this correct? For

					countries which did not make use of this national discretion of Art 400 (2) (c) CRR so far we deem Art 9 (2) and the Annex of this proposed regulation will be applicable. In this context the following questions arise: Are also cross-border upstream exposures from a subsidiary to a mother credit institution or exposures to a subsidiary of the mother company in another Member State and equivalent third countries covered if the requirements of the Annex I are fulfilled? We deem this as to be the case.
☒	☐	Article 400(2) of Regulation (EU) No 575/2013: Exemptions	9.7	Clarification	Point 7: „This Article shall only apply where the relevant Member State has not exercised its option under Article 493(3) of Regulation (EU) No 575/2013 to grant a full or partial exemption for the specific exposure prior to the entry into force of this Regulation.“ If a Member State exercised its option (e.g. AT due Article 103q, point 4. a) bb in view of Art 400 (2) (c) CRR) in the Austrian Banking Act) is Article 9 of of Public consultation valid for them? We deem that this is not the case. From our point of view this should be more clearly stated as the text currently only states when Art 9 is applicable but it does not state what exactly is applicable for the SSM-banks. Art 103a (4) (a) (bb) Austrian Banking Act reads as follows: 4. (regarding Article 1a): Until such time as any legislative proposal enters into force pursuant to Article 507 of Regulation (EU) No 575/2013, and up to 31 December 2028 at the latest, the following exposures shall be excluded in full or in part from application of Article 395(1) of Regulation (EU) No 575/2013:

					a) By being given a weighting of zero:[...] bb) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to the EEA parent undertaking pursuant to point (15) of Article 4(1) of Regulation (EU) No 575/2013, to other subsidiaries pursuant to point (16) of Article 4(1) of Regulation (EU) No 575/2013 of that parent undertaking or to its own subsidiaries, insofar as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject in accordance with Regulation (EU) No 575/2013 or Article 6 para. 1 FKG;
☒	☐	Annex I	Point 1	Clarification	(a) "financial institutions, other than parent financial holding companies or parent mixed financial holding companies shall only be those subject to appropriate prudential requirements consistently with Article 113(6) of Regulation (EU) No 575/2013; and […]" Do we understand this text correctly, that in principle all financial institutions are subject to Art 9, but in the instance of a parent financial holding or parent mixed financial holding company the requirements of Art 113 (6) CRR are not applicable? Is the applicability for financial institutions limited to Art 113 (6) (b), (c) and (e) CRR, as stated then in No 2 (a) (i)? We deem both to be the case, a clarification would be appreciated. Do we understand it correctly that ancillary services and other companies listed in Art 9 (2) are also covered by Art 9 (2) and the Annex, but Art 113 (6) CRR is not applicable to these companies? We deem this to be the case, a clarification would be helpful.
☒	☐	Annex I	Point 2	Clarification	(a)(ii) “the proposed intra-group exposures are justified by the

					group’s funding structure;" This requirement is not completely clear. From our perspective this requirement could be deleted because the inclusion of all companies in the same scope of consolidation implies that enough external capital is available to cover default risks and enough liquidity is available for the whole banking group. If anything additional requirement, e.g. in view of intragroup funding, is targeted at, this should be set out more clearly.
☒	☐	Annex I	Point 2	Deletion	(a)(iv) „the credit institution's risk management procedures, IT system and internal reporting enable it to continuously check and ensure that large exposures to group undertakings are aligned with its risk appetite at legal entity level and at consolidated level, where relevant.“ In view of the hard requirement of the inclusion of intragroup-exposures in the risk appetite we would suggest to replace the term „are aligned with its risk appetite“ by „are aligned with its risk strategy“. The iclusion of intragroup-exposures into the RAS mas not be appropriate for all circumstances, whereas the treatment within the overall risk-strategy is fully understood. Another issue is to avoid any paradox situations, i.e. exempting intragrou-exposures from LE-limits on the one hand side, but including them in the RAS. There is a good reason for the exemption of intragroup-exposures in both frameworks, at the same time the monitoring of such exposures, specifically in view of concentrations, is fully understood. Intragroup-exposures by nature do not exist at consolidated level

					because they are eliminated in the consolidation calculation. Therefore we would propose to delete the respective reference. Furthermore these conclusions are also to be taken into account in view of No 2 (b) – concentration risk.
☒	☐	Annex I	Point 2	Deletion	(b)(v) „there is evidence that the management of concentration risk is consistent with the group's resolution strategy, as reflected in the recovery and resolution plans." Point (2) allows for the exemption of intra-group exposures (exposures under Art. 400(2)(c) CRR) from the large exposure limit under certain conditions, which are further specified in Annex I. Point (2)(b)(v) of Annex I requires banks to take into account whether "there is evidence that the management of concentration risk is consistent with the group's resolution strategy, as reflected in the recovery and resolution plans". Point 3(f) states that the ECB may request "documentation showing that the management of concentration risk is consistent with the group's resolution strategy as reflected in the recovery plan". It should be noted that the recovery plan does not contain any information about resolution strategies; as such, any references to recovery plans should be deleted in Points 2 and 3. Furthermore, the resolution plan, including the resolution strategy, is determined by the resolution authority (in our case the SRB) and may not be communicated to the bank (or the competent authority) at all. As such, it is not possible to undertake the assessment required in Point 2. On a practical level, even where the resolution strategy to

					be communicated to the bank, it is unclear when this will occur, as the SRB is not yet fully operational and has not yet developed a resolution plan for any bank/ banking group. It would, therefore, be impossible to comply with the requirement in 2(b)(v) at this stage, making it impossible to avail ourselves of the (currently allowed) exemption for intra-group exposures for large exposure purposes. We therefore suggest deleting Points 2(b)(v) and 3(f) in its entirety.
☒	☐	Annex I	Point 3	Deletion	Point 3 (f), please see comments at previous item Point 2 (b)(v)
☒	☐	Annex I	Point 3	Deletion	ECB may request ... (a) A letter signed by the parent undertaking's Chief Executive Officer (CEO), with approval from the management body, stating that the credit institution complies with all the conditions for an exemption as laid down in Article 400(2)(c) and Article 400(3) of Regulation (EU) No 575/2013. The final responsibility for the fulfilment of these requirements is – based on company law and also banking supervision law – allocated to the respective local company, either the subsidiary or the mother credit institution. The CEO and the management body of the parent undertaking cannot take the responsibility for local implementations. On the other hand side we deem this requirement as not necessary, because the management is – also in view of many other requirements – untimatly responsible for the implementation of requirements from banking supervision law. The additional value of this requirement is not obvious to us. It adds unnecessary bureaucratic burdens.

☒	☐	Annex I	Point 3	Amendment	ECB may request ... (d) "Documentation signed by the CEO and approved by the credit institution's management body attesting that the credit institution's risk evaluation, measurement and control procedures are the same as the regional or central body's and that the credit institution's risk management procedures, IT system and internal reporting enable the credit institution's management body to continuously monitor the level of the large exposure and its compatibility with the credit institution's risk appetite at legal entity level and at consolidated level, where relevant, and with the principles of sound liquidity management within the group." We deem this requirement as not necessary in view of the sign-off by the CEO and approved by the management body, because the management is – also in view of many other requirements – ultimately responsible for the implementation of requirements from banking supervision law. The additional value of this requirement is not obvious to us. It adds unnecessary bureaucratic burdens. We suggest to delete the words „signed by the CEO and approved by the credit institution's management body" from this point. Similar Point 3.(d) in Annex II.
☐	☒	Scope, content and effect	1.2.1	Clarification	Section I: Paragraph 2.1 specifies that the guide should only apply to significant credit institutions. While harmonising the treatment of national discretions for SSM banks, this introduces an unlevel playing field at national level, where these banks will be subject to different rules than less significant institutions. This is particularly an issue for those 'significant' institutions that are essentially domestic institutions without cross-border activities and which are

			placed under SSM supervision due to their (relative or absolute) size or because they have benefitted from government support in the past.
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