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

EACB - European Association of Cooperative Banks

Contact person

Mr ☒ Ms ☐

First name
Marco

Surname
Mancino

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 (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.

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

Name of Institution/Company	EACB - European Association of Cooperative Banks
	Part 1 of 2 of EACB Comments - part 2 of 2 in separate document
Country	Belgium

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	☐	Large Exposure	9	Amendment	General comments: All in all we see that the proposals put forward in Art. 9 and Annex II do not take into account the numerous risk mitigating factors envisaged by the CRR. According to Art. 400(3) the supervisor is still mandated to provide evidence to justify an exemption. In addition, any proposal should not be in contrast or at the detriment

					of the option left to Member States under Art. 493(3) CRR to allow certain exemptions until 2029 (in this respect Art. 9(7) seems to point in the right direction). Art. 9(3), and criteria from Annex II: The additional requirements for the preferential treatment proposed in Annex II seem too extensive, as they are even more demanding than those under Art. 113(6),(7) CRR. It is also questionable how certain requirements, such as the traceability at all times of the exposure for a intra-group/network funding could work (for instance the requirements for mandatory liquidity provision, or the necessary comfort letters provided for capital instruments).With regard to the documentation to be produced, a phased in implementation would be desirable. The requirement for timely repayablity of loans is questionable especially with regard to participations in equity instruments. Art. 9(4): According to Art. 9 para 4. covered bonds shall be exempted from the application of Art. 395 para. 1 CRR only for 80 % of of their nominal value wheras according to Art. 400 para 2 a) CRR a full exemption would be possible. We believe that the adoption of this full exemption should be recognised in Art. 9 para 4. This would also be in line with the amended requirements and therefore further recognition procedures of covered bonds in the LCR according to the Delegated Regulation (EU) 2015/61. Also, alignment with the risk weighting for solvency purposes would be desirable (e.g. 10% according to Art. 129(5)(a) CRR).
☒	☐	Outflow rate	11	Amendment	The proposed 5% outflow rate to be applied to trade finance off-

	applicable to trade finance off balance-sheet related products	balance sheet related products seems not appropriate and should be 0% instead. This is allowed by CRR which refers to a 5% outflow as a maximum. Indeed, off-balance sheet trade finance products are mainly technical guarantees (bid bonds, performance bonds, tender bonds, advance payment and retention guarantees) and documentary letters of credit (L/C). When a guarantee or documentary L/C is drawn by the beneficiary, the bank will first ask its client to bring the necessary funds to its bank account, and then will pay the drawn amount to the beneficiary. The liquidity outflow is normally zero. The only exceptional cases where a bank would be subject to a liquidity outflow would be: i. If the client is in default, and cannot honor its financial obligations ii. If there is a disagreement between the bank and its client Regarding case (i), it is assumed in the LCR framework that performing clients do not default in the 30 day time horizon. Therefore liquidity outflows would only concern off-balance sheet exposures on clients that are already in default on the LCR calculation date. Regarding case (ii), consensus among experts and practitioners confirm that this happens very rarely, and would not be correlated to a potential liquidity crisis. Hence the liquidity outflows generated by these products are close to zero. We therefore support a 0% RSF Factor and 0% outflow

					rate recommendation for off-balance sheet trade finance products such as guarantees and documentary letters of credit. We would like to take this opportunity to recall Recital (73) of CRR: Trade finance exposures are diverse in nature but share characteristics such as being small in value and short in duration and having an identifiable source of repayment. They are underpinned by movements of goods and services that support the real economy and in most cases help small companies in their day-to-day needs, thereby creating economic growth and job opportunities. Inflows and outflows are usually matched and liquidity risk is therefore limited.
☐	☒	Section II, Chapter 1, Consolidated supervision and waivers, point 3	3(3)	Amendment	The additional requirements proposed for Art. 7CRR, inter alia integrated IT systems, may have effects related to recovery and resolution plans, and should be considered in detail. We believe that at least appropriate transitional periods should be foreseen.
☐	☒	Section II, Chapter 1, point 4, liquidity waivers	4	Amendment	We urge the ECB not to exclude reporting requirements from the liquidity waivers from Art. 8 CRR and Art 2 LCR delegated act. Indeed, reporting requirements represent a major operational burden and we believe that this burden should be alleviated when all the criteria to get a liquidity waiver from the competent authority are fullfilled (notably to grant the waiver, there is a requirement imposing the monitoring of the liquidity position of the entities covered by the waiver). This would be particularly important to relieve minor subsidiary institutions in the delivery of increasingly complex and tightly timed regulatory reporting. At least, reporting requirements should be maintained only for a few material entities or, for instance, reporting could be required from "waived" entities

					only once a year.
☐	☒	Section II, Chapter 1, point 3, 4, liquidity waivers	3, 4	Amendment	Eligibility requirements for liquidity waivers are very stringent (even dissuasive), and in excess of CRR Article 8 stipulations. Notably, providing multiple external legal opinions (on the free movement of funds or on the absence of legal impediments with regard to national insolvency laws) will be very costly for applicants. We consider that such requirements are not consistent with the SSM and may send a wrong signal to the market. Moreover it is in contradiction with the report of the Commission (COM 2014/327) concluding that the Commission's "review has not revealed relevant legal obstacles that would prevent institutions from entering into contracts that provide for the free movement of funds between them within a single liquidity sub-group". As for the contracts required under Article 8(1)(c), the ECB should consider providing a common template for banks. In particular, some of the documentation required to benefit from the derogation to the application of prudential requirements on an individual basis, would not be relevant. In concrete this is the case for the following points: ii) a legal opinion, iii) the report of a guarantee in the financial statements, x) a formal agreement granting the right to change the management. These new requirements represent a clear disincentive for banks to submit a request for a waiver. As recalled above, systematically requesting legal opinions seems lengthy, costly and disproportionate compared to existing practices. The following documents to be included in the waiver procedures as proposed by the ECB will lead to lengthening the process and to adding

					unnecessary administrative burden, for example: - legal opinions, either external or internal, are required for documentation related to Article 7(1) waivers (page 8 of the Guide) and for article 8 (page 11 of the guide) - a statement signed by the CEO of the subsidiary and approved by the management body of the parent certifying there are no practical impediments to the transfer of funds or the repayment of liabilities is required by Article 7(1) (page 9 of the Guide) - compliance with liquidity SREP around the time of the waiver application for article 8 (page 12 of the guide) These are all items that are either not formally required or non in existence at present and that would only complicate the processes between institutions and supervisors. Finally, as a clarification it should be indicated that : - if the waiver has already been granted by the national competent authority prior to 4 November 2014, this continues to be valid, - new requirements would only apply to new requests.
☐	☒	Section II, Chapter 1, point 8, exclusion of consolidation	8	Amendment	The waiver pursuant to Art. 19(2) CRR should continue to be possible in principle for providers of ancillary services. Especially for liquidity purposes, the waiver under Art. 19(2)(b) CRR should be possible if the company concerned has no or very low liquidity risk, which would be negligible for the purpose of a supervisory "monitoring liquidity". For the assessment of an exclusion from consolidation a relative assessment of the balance sheet total should be pursued rather than an absolute one.

					While the general approach on Art. 49(1) CRR is well received, we do not understand the reference to the fulfilment of 'appropriate disclosure requirements' as bank-run financial conglomerates already disclose their supplementary own funds requirement and capital adequacy ratio of the financial conglomerate as per Art. 49(5) CRR. We believe that disclosure requirements should not exceed those mandated under Art. 49(5) CRR and that any change should go through the European Conglomerate directive of 2002. The waiver for deductions of holdings of own funds instruments of a financial sector company according to Art 49 (2) CRR is an essential part of the effects of consolidated supervision. Such deductions should only be required for reporting purposes and not for own funds requirements. The withdrawal of such permissions should also be restricted to reasonably determined cases where certain deductions are essential for structural separation and specific resolution planning. Additionally, if there is an unavoidable need of deductions in the case of a consolidated supervision, such deductions should be limited on the merits and to the extent considered and determined as necessary. The prohibition of a waiver for a consolidated group as a whole would cause a disproportionate financial and technical drag.
☐	☒	Section II, Chapter 2, Own funds, point 4, 5	4, 5	Clarification	
☐	☒	Section II, Chapter 2, Own funds, point 6	6	Amendment	General: With reference to guidance on Art. 49(3) CRR, in the context of an IPS a permission to individual institutions on a case by case basis is not meaningful. Rather the IPS itself (with all the adhering institutions) should be the subject of the permission. Only in this way it is possible to have a consistent standard for all the members

					of an IPS. We appreciate the SSM intention to foster more prudent and risk sensitive consolidation/aggregation practices, however we believe that the steep increase in resources needed to fulfil the additional requirements suggested would counter any prudential added value envisaged. Art. 49 (3) CRR aims firstly to exclude multiple counting of capital and inappropriate creation of own funds within an IPS. As such, Art. 49(3) and 113(7) try to reflect in a proportionate manner the structure of a network of independent local banks. It is frequent that in such networks the only institution applying IFRS is the central body, which is also the institution owned by the local banks and towards which most of the intranetwork exposures arise. Requirements should reflect such specificities and take into account the complexities involved into reconciling positions among hundreds of local institutions.
☐	☒	Section II, Chapter 2, Own funds, point 6	6	Amendment	6(2)(i): According to point 6 para 2 (i) the information on the consolidated balance sheet /aggregated calculation must be reported on a quarterly basis. On the other hand, Art. 99(1) CRR only requires a semi-annual reporting of this data. In particular with regard to spillover effects to LSIs members of an IPS such a requirement would constitute a disproportionate burden, which does not seem justified by the very limited additional information provided. As per the business model and applicable national GAAPs often the own funds of local banks only changes at the date of accounts approval, thus a semi-annual reporting seems sufficient. 6(3)(i): With regard to this point, we believe that the focus should rather be

					on avoiding double gearing and capital cascades, trying to capture all possible exposures between local banks (which might be very numerous) and their central institution seems to steer away from the primary goal.
☐	☒	Section II, Chapter 2, Own funds, point 6	6	Clarification	6(2)(ii) We believe that the requirement of the reporting of FINREP data by an IPS is not justified. In primis, it should be explicitly clarified that such case could only be relevant for IPS drawing consolidated accounts (and not aggregated ones). In any case such a requirement would imply, also for consolidated IPS and with huge spillover effect for LSIs, that all member of an IPS have to report full FINREP data. Otherwise such FINREP data would not be available to the IPS. Full regard of the proportionality principle should be provided. It is not legally consistent to force smallest institutions to adopt full FINREP requirements by means of these guidelines.
☐	☒	Section II, Chapter 4, Large exposures, point 3	3	Deletion	The general prohibition of an exceedance of the large exposure limit should be deleted. According to Art. 396(1) CRR an exceedance is in the discretion of the competent authority thus ensuring an adequate and flexible reaction.
☐	☒	Section II, Chapter 5, Liquidity, point 3	3	Amendment	According to Art. 510(3) CRR the NSFR will not be applicable before the end of 2016, and a proposal has yet to be published. In this context, point 3 seems difficult to understand and implement and should be deleted. If, on the other hand, the ECB's proposal implies that it would not allow in any case longer reporting obligations (than daily) if the institutions falls below the minimum ratio for LCR, this would represent an undue tightening of CRR and

					should be amended.
☐	☒	Section II, Chapter 5, Liquidity, point 4 and 5, intragroup liquidity inflows and outflows	4, 5	Amendment	1) In order to demonstrate the sound liquidity risk profile of both liquidity provider / receiver, it is requested that either - entities have fulfilled a solo LCR (please confirme that it is calculated after taking in account the required preferential treatment) for at least one year (element which can be demonstrated as of October 2016 only); - liquidity management of the entities is deemed of high quality as evaluated in SREP: which, in turn, can be demonstrated only once solo SREP evalutions have taken place. In absence of national liquidity requirements other alternatives to assess liquidity should be proposed to allow credit institutions to benefit from this national discretion without waiting until October 2016. 2) The contractual requirements proposed by the ECB would require the implementation of a contract model transmitted by the ECB and containing the various requirements. Credit institutions could base on this model to submit their request. Eligibility requirements to benefit from differenciated treatment of intragroup liquidity inflows and outflows are very stringent (even dissuasive) and should be alleviated. Notably the requirement imposing that the institutions should demonstrate that they are fulfilling their LCR on an individual and consolidated basis for at least one year should be removed: this is not consistent with the purpose of the exemption and it will unduly postpone the ability of an entity to benefit from the exemption. The requirement for an access to regular daily monitoring systems

					of the liquidity positions is too demanding from an operational perspective, the sharing of daily liquidity monitoring reports is instead sufficient. 3) In articles 5.iii.b (institutions established in the same Member State), 4.ii.b and 5.ii.b (institutions established in different Member States) it is required that the institution meets the national liquidity requirements and their LCR requirements for at least one year (when applicable). It would be necessary to mention that it is a requirement for institutions concerned to respect the one or the other one of these 2 requirements (if applicable) »
☐	☒	Section II, Chapter 5, Liquidity, point 6, Diversification of holdings of liquid assets	6	Amendment	"Imposing restrictions and requirements for diversification of holdings of liquid assets should reflect the structure of HQLA markets in the specific jurisdictions and/or markets. Taken all of this into account, the LCR Delegated Regulation allows for up to 70% level 1b covered bonds in the liquidity buffer, but despite this the ECB de facto lowers that to 60% when considering implementing a SREP decision on institutions with an aggregate amount of covered bonds exceeding 60% of the total HQLA. This would be disproportionate in currency areas with a limited amount of level 1a assets (primarily government bonds) which is the case in some jurisdictions, as well as a disturbance of the delicate balance, between HQLA assets, that the Commission drafted in the LCR regulation."
☐	☒	Section II, Chapter 5, Liquidity, point 8, currency mismatch	8	Amendment	We suggest to amend criterion (i) by defining the notion of "significant currency" and to delete criterion (ii). Indeed, we consider that there is no reason for the competent authority to

					impose a limit on net liquidity outflows denominated in a significant currency for which there is no issue in terms of convertibility, liquidity transferability or foreign exchange risk hedging (all these topics are already adressed through the criterion i).
☐	☒	Section II - Chapter 5, Liquidity, point 12, 13	12, 13	Clarification	We expect that the ECB will endorse business models / institutions already allowed by national authorities to calculate corresponding outflows net of interdependent inflows before the guidelines are entered into force. 12: We suggest to clarify the requirement to have the same gross amount taken into account in the paragraph (i) by indicating that it is "the same gross amount before application of the standard and applicable weightings of inflows and outflows". The requirement for matching gross amounts cannot imply that the institution may be withheld from charging commission/margins, which are drawn in a single amount with the principal payment. An alternative wording may be seen requiring that the inflow amount should be at least the outflow amount, but also in this case there could be excesses. Moreover, it is not clear how institutions shall take into account the functioning of payment systems. 13: With regard to the proposed provisions for Art. 33 of the LCR delegated act, the demand for a low liquidity risk profile seems to go beyond the requirements of the LCR regulation. In particular, is not clear the reference to interrelated inflows and outflows (requirement (i)(a)) as this aspect is not relevant in terms of the

					business model activities concerned (leasing, consumer loans, etc.).
☐	☒	Section II, Chapter 6, Transitional provisions, point 4	4	Clarification	With regard to a possible exemption from the Basel I-floor (as per Art. 500 CRR), point 4 only makes a general reference to the requirements of the CRR. We would welcome more punctual indication of the requirements.
☐	☒	Section III, Chapter 1, Consolidated supervision, point 6	6	Amendment	With regard to the way forward on Art. 24(2) CRR, on the one hand hand corresponding data already exist in the context of FINREP. On the other hand it would not be justified to force institutions to use IFRS by this channel. Moreover, due consideration should be give to the expected expenses for the relevant procedural changes that would be needed.
☐	☒	Section III, Chapter 3, Capital requirements, point 1, 2	1, 2	Amendment	The identification as public sector entities in the meaning of Art 124(4) CRR is strongly dependant on individual circumstances, and Member States themselves should have the possibility to do so. This also in consideration of the principle of subsidiarity. The ECB list should include at least development banks, as already identified by NCAs (e.g. by the BaFin). With regard to Art. 124(2) CRR, immovable properties are one of the most relevant recoverable assets, in particular in the case of residential property. Therefore the setting of higher risk weight should be avoided, or at least limited to exceptional cases.
☐	☒	Section III, Chapter 5, Liquidity	1	Clarification	Please clarify the purpose of this article. The informations provided in the Short Term Exercises should not be taken as the only source to calibrate the outflow rates and we suggest to refer to credit

	instutions internal stress as mentionned in the article 23(2) of Commission Delegated Regulation 2015/61 to calibrate these outflow rates.

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

EACB - European Association of Cooperative Banks

Contact person

Mr ☒ Ms ☐

First name
Marco

Surname
Mancino

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 (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.

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

Name of Institution/Company	EACB - European Association of Cooperative Banks
	Part 2 of 2 of EACB comments, Part 1 of 2 in separate document.
Country	Belgium

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☐	☐			Choose one option	
☐	☒	Section II Chapter 9 No. 4	91	Deletion	We believe that for reasons of consistency and legal soundness, before laying down criteria for the authorization to hold one additional non-executive directorship according to Art. 91(6), the ECB should await the the EBA guidelines to be adopted under Art

					91 (12) (a) CRD IV, which will touch upon, at least partly, similar if not the same issues. According to this provision EBA shall issue guidelines on the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution. This would help to avoid any inconsistencies and contradictions. In any case the ECB assessment for authorising an additional non-executive directorship should be without prejudice to the rights provided for under article 91(4) CRD, i.e. the ECB should decide whether to grant an extra mandate without affecting the privileges already granted by the legislator. In the same vein, criteria for "full-time occupation" and "executive mandate" may only be used for the purposes of the ECB's assessment, where this occupation or mandate is not already held within the same group or IPS as set out in Art. 91 (4) CRD / Art. 113 (6) or (7) CRR.
☐	☒	Section II Chapter 9 No. 4(ii)	91 CRD IV (ii)	Amendment	Involvement in committees may enhance management body members' experience and knowledge and therefore increase their efficiency. Thus, such committee membership is not necessarily implying the increase of the burden for performing an extra non-executive directorship mandate. Yet, the criterion of additional responsibilities under section 4 (ii) may remain applicable only to the chairman of the supervisory board since the regular workload of the chairaman could be considerd higher.
☐	☒	Section II Chapter 9 No.4	91 CRD IV (iii)	Clarification	In item 4 (iii) the scope has to be more precise and refer to cases where the complexity of the supervisory board activities increases. Thus the text would benefit from the addition of "international business activities and/or group structures" after the example "the

					company is regulated or listed". It might also be appropriate to refer to criteria as used by the SSM for determining the four categories of banks under the SREP.
☐	☒	Section II Chapter 9 No. 4	91 CRD IV (iv)	Deletion	Item 4 (iv) should be deleted. Otherwise the legally provided privileges under art. 91 (4) CRD would be effectively sanctioned by the supervisor, thus leading to legal uncertainty.
☐	☒	Section II Chapter 9 No. 4	91 CRD IV (v)	Clarification	Generally, the mandates of the members of the supervisory boards are not permanent, but allocated for a certain time span. It should be clarified what "permanent" means in opposition to "temporary" in the context of section 4 (v).
☒	☐	Entry into force	27	Amendment	The entry into force of the draft Regulation is set on the twentieth day following that of its publication in the Official Journal of the European Union. The timing seems too short for adaptation of processes and especially for IT implementation. We believe that, as a minimum delay, it should be postponed to 30th of June (or provide at least three months from the final version).
☒	☐	Transitional provisions - unrealised losses and gains measured at fair value	16, 17	Amendment	Art. 16 referring to Art. 467(3) CRR should also clarify Art. 467(2) last subparagraph. We believe that unrealised gains and losses on exposures to central governments classified in the AFS category should be included in CET 1, unless the institution is asking otherwise (see Art. 467(2) CRR)" In fact, a generalised deletion of the prudential filter on unrealised gains or losses on exposures to central governments classified in the “Available for Sale” seems to come too early, particularly in light of the following: - the first application date for the IFRS 9 will be 1st

					January 2018, - the prudential filter for unrealised gains shall be reviewed in due time by the European Commission.
☒	☒	General comments		Clarification	We believe that ECB should allow institutions to develop consistent capital planning over time, we also see that the various provisions which maintain stricter national rules for transitional O&Ds should be harmonised in a way of accepting as a rule the application of the most favourable treatment provided for in the transitional arrangements included under the CRR.
☒	☐	Own funds	3	Clarification	With regard to the calculation of the amounts for the application of a 1250% RW under Art. 89(3) CRR, we propose to more explicitly clarify the wording of the proposal in order to reflect the preservation of the alternative approach available to institutions under Art. 90 CRR for the amount of qualified holdings.
☒	☐	Amendment to IAS 19	19	Clarification	According to this provision competent supervisory authorities may permit institutions that prepare their accounts in conformity with the international accounting standards to add to their CET 1 capital the applicable amount in accordance with Art 473 (2) and (3) CRR during the period from 1 January 2014 until 31 December 2018. The fact that the ECB exercises this discretion in the institutions' favor is seen in a positive light.
☐	☒	Section II -Chapter 5 Liquidity	4	Clarification	Art. 422(8) CRR describes the possibility of a preferential outflow on intragroup deposits. On the other hand, the LCR Delegated Act only mentions preferential outflows for intragroup credit and liquidity facilities (Art 29), and not for intragroup deposits. It should

					be clarified whether this means that banks could possibly benefit from preferential outflows for both intragroup deposits and intragroup liquidity facilities.
☐	☒	Section II -Chapter 5 Liquidity	4	Clarification	Regarding point 4(i)(a), in the case of a bank that asks for a beneficial outflow on a deposit that it has received from an intragroup counterparty, it does not seem logical to consider that the bank can expect a lower outflow if it can show that the depositor cannot withdraw from its obligations. In the case of sight deposits, the depositor has no obligations, it can withdraw its deposit any day. The rationale for the lower outflow is rather grounded on the fact that in a stress scenario, the depositing entity would support its sister company and not withdraw its deposit. Symmetrically, it would not include a corresponding inflow in its LCR. Similarly, in the case of a bank that asks for a beneficial outflow on a liquidity facility that it has granted to an intragroup counterparty, it does not seem logical to consider that the bank can expect a lower outflow if it can show that the beneficiary of the facility cannot withdraw from its obligations. It is not clear what kind of obligations the beneficiary of the liquidity facility might have. For the sake of clarity, we would suggest to treat the two situations in two distinct paragraphs of the guide
☐	☐			Choose one option	
☐	☐			Choose one option	
☐	☐			Choose one option	
☐	☐			Choose one option	

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