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

European Association of Public Banks

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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	European Association of Public Banks
Country	Belgium

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	☐		9	Clarification	In accordance to Article 400 (2) (a) CRR, competent national authorities are entitled to exempt Covered Bonds exposures fully or partly from the calculation of large exposure limits as set out in Article 395 (1) CRR. Against this, Article 9 No. 4 of the ECB draft regulation reduces this optional 100% exemption to only 80% of the nominal value of Covered Bonds exposures. In order to adhere to the aforementioned national discretionary power stated in the CRR, the complete exemption of Covered Bonds from the calculation of large exposure limits needs to be maintained in the ECB draft

					regulation likewise
☒	☐		21	Amendment	For countries that pursuant to Article 478(2) of the CRR have standardised a possible 10-year period for the deduction of capital items from deferred tax assets that rely on future earnings, the phase-out is reduced to 6 years up to the end of 2018 by Article 21 of the draft ECB Regulation. This involves a tightening of the measure. The ECB may not override national law. The question arises of how to deal with options that the CRR / CRD IV requirements grant to the competent supervisory authorities (as in the present case), but the exercise of which has been enshrined in national law by the member states.
☐	☒	Section II Chapter 5, Nr 4		Amendment	Reporting requirements should also be incorporated in the regulations governing the liquidity waiver. Following the model used for reporting on capital requirements (reporting on capital requirements - group solvency; information on subsidiaries), the distribution of liquid assets and net liquidity outflows of the non-reporting institutions could be requested on a quarterly basis. In addition, the proposed procedure whereby institutions can file an application for intragroup exemptions only if the application for the issue of a liquidity waiver has been rejected appears too elaborate. This is true in particular in terms of the capacity used by the supervisory authority's review of the application. If it is already certain in advance for the institution that the requirements for the liquidity waiver cannot be fulfilled, it should be possible, irrespective of the application for a liquidity waiver, to file the applications for the exemption described under articles 411-428 CRR (as well as the corresponding regulations in the Delegated act on the liquidity coverage ratio) separately.

☐	☒	Section II Chapter 1, Nr 8	Deletion	By referring to the BCBS standards, the ECB tightens the measures of the CRR and is thus overstepping its mandate here. The reference to the BSBS standards should be deleted.
☐	☒	Section II, Chapter 2, Nr 4	Deletion	In the final analysis, the deduction of insurance holdings within conglomerates can be further avoided. By introducing additional transparency requirements, the ECB tightens the measures of the CRR and is thus overstepping its mandate. The introduction of additional duties should be deleted.
☐	☒	Section II, Chapter 2, Nr 6	Clarification	It should be clarified that "case-by-case basis" means the decision through a full joint liability protection scheme. The audit requirements concerning the extended aggregated calculation have been tightened, and the reporting frequency has been shortened from semi-annually to quarterly. The requirement that the aggregated calculation must be carried out on the basis of FINREP is problematic. Here the ECB is tightening the requirements of the CRR in an inadmissible manner.
☐	☒	Section II, Chapter 2, Nr 7	Deletion	In accordance with Article 78(1)(b) CRR, own funds must exceed Tier I requirements plus the combined buffer requirement "by a margin that the competent authority may consider necessary on the basis of the SREP". Now, based on the measure, the ratio is supposed to exceed the requirements including the SREP requirement. Although the requirements for Tiers 1 and 2 are to be complied with at all times, i.e. also after a relevant measure, the wording of the CRR is nevertheless tightened, which is something that has to be rejected.
☐	☒	Section II, Chapter	Deletion	Established European case law has explicitly enshrined the

		2, Nr 11		exemption option in the CRR. With a general ex ante negation of this option, the ECB is tightening the applicable CRR regulations and thus goes against the legislation. For that reason, the ex ante denial must be rejected.
☐	☒	Section II, Chapter 3, Nr 9	Deletion	The planned review of the increase in the alpha factor for calculating the exposure value for counterparties with a specific correlation risk does not, in our opinion, achieve its aim, as an increase of the alpha factor will lead to an increase in the capital requirements. The current increase of the exposure value for counterparties with a specific correlation risk in the amount of 40 per cent is sufficient. In addition, the use of own estimates for the alpha factor should continue to be allowed.
☐	☒	Section II, Chapter 3, Nr 10	Choose one option	The provisional retention of Article 310 of the CRR is welcomed. The continued retention of the alternative calculation of capital requirements for exposures to a qualified central counterparty should also remain after the new regulations of the BSBS come into force.
☐	☒	Section II, Chapter 9, Nr 3	Deletion	The criteria proposed by the ECB for the interpretation of the term "significant" must be rejected. In particular, the assets threshold of EUR 5 billion introduces an additional, purely quantitative criterion that does not permit any qualitative assessment of the relevant institution. This kind of qualitative consideration of an institution is, however, provided for under Article 76(3) CRR. The qualitative categorisation by the ECB should take into account the respective business model, the related risks and the management as well as the national regulations. Reference should also be made to the experiences drawn from the Review on Risk Governance and

				Appetite (RiGA).
☐	☒	Section III, Chapter 1, Nr 6	Amendment	The exercise of the option by the ECB may not result in a negative impact on national financial reporting regulations. Reference is made to recitals 19 and 39 of the Single Supervisory Mechanism Regulation and to recital 39 of the CRR. Furthermore, reference is made to Article 24(2) CRR and its position in Part 1, Title II, Chapter 2 of the CRR, as this part of the CRR applies only to groups, not, however, to individual institutions. Consequently, this means that the ECB cannot exercise the option pursuant to Article 24(2) CRR in respect of individual institutions.
☐	☒	Section III, Chapter 2, Nr 1	Deletion	The European legislation explicitly provides for the possibility of recognition. The ECB should consequently not be able to make any ex ante decision to no longer issue licences. The ECB oversteps its mandate here. The European legislation explicitly provides for the possibility of recognition. The ECB should consequently not be able to make any ex ante decision to no longer issue licences. The ECB oversteps its mandate here.
☐	☒	Section III, Chapter 3, Nr 1	Clarification	Promotional banks, which are already recognised by their national regulator as public sector entities within the meaning of Article 116(4) CRR and are thus given a risk weighting identical to that of the central government or regional authority, must be considered in the further deliberations in order to ensure their political development and funding mission.
☐	☒	Section III, Chapter 3, Nr 7	Deletion	The economic situation in the eurozone has not changed significantly and abolishing the exemption arising from Article 382(4)(b) therefore appears radical and premature. For that

					reason, Article 382(4)(b) CRR should be retained.
☐	☒	Section II Chapter 1, Nr 3		Clarification	A clarification is welcomed to confirm that i) this article only applies to new waiver requests and ii) waivers already granted by national competent authorities will still be valid. Moreover, the documentation of waiver requests is disproportionate, particularly on points ii) a legal opinion, iii) point iii) the report of the parent undertaking guarantee in the financial statements, point x) a formal agreement granting the right to change the management. Such a demanding documentation will lengthen the process and create administrative burden for entities that would consider to apply for a waiver.
☒	☐		4	Amendment	The timeframe envisaged by the ECB (March 2016) seems rather short in order to allow banks currently using the 180-days deadline to fully implement a definition of 90 days in their IT systems and internal processes and policies. Moreover, it is not known at this stage whether this implementation may be considered as a “material”, thus requiring the approval of the competent authority, as per Delegated Regulation (EU) 529/2014 of 12 March 2014. Complementing the ECB Regulation with a timeline to appreciate if a recalibration of internal models is needed and a deadline for implementing the change would be welcomed.
☐	☐			Choose one option	
☐	☐			Choose one option	
☐	☐			Choose one option	