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

FRENCH BANKING FEDERATION

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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.

EUROPEAN CENTRAL BANK

BANKING SUPERVISION

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Template for comments

Name of Institution/Company	FRENCH BANKING FEDERATION
Country	FRANCE

Comments

Regulation	**Guide**	**Issue**	**Article**	**Comment**	**Concise statement why your comment should be taken on board**
☒	☐	Chapter I Default of an obligor	4	Amendment	We welcome the alignment of the definition of default regardless of the approach used for the calculation of capital requirements. However, the timeframe envisaged by the ECB (March 2016) seems rather short in order to allow banks to fully implement this definition in their IT systems and internal processes and policies. Moreover, it is not known at this stage whether this implementation may be considered as “material”, thus requiring the approval of the competent authority (See COMMISSION DELEGATED

					REGULATION (EU) No 529/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013). In the context of on-going review of internal models by the SSM and EBA discussion on the future of the IRB approach, we propose to complement the ECB Regulation with a timeline to appreciate if a recalibration of the internal model is needed, and a deadline for implementing the change. Please find our suggestion below: "Credit institutions shall examine the impact and potential changes before March 2017 and appreciate if the new definition requires the approval of the competent authority before the end of 2017". We would like to take this opportunity to add a general remark on the proposed ECB rules entry into force date --currently set on the twentieth day following that of its publication in the Official Journal of the European Union. Given IT systems and procedures changes to be performed in order to accommodate foreseen regulatory evolutions, a 20 day period is operationally too short. It is worth noting that IT projects are budgeted on a yearly basis. We would therefore like to propose a transitional phase with the regulation entering into force at least from 30 June 2016.
		Chapter I Large exposures exemptions	9	Clarification	We understand that article 9 of ECB Regulation only applies if the member state has not exercised the option provided for in article 493(3) of CRR. The French government (Ministry of Economy and Finance) has exercised this option through a French Ministerial Order of 23 December 2013 “Arrêté du 23 décembre 2013 relatif à l'application de l'article 493 (3) du règlement (UE) n° 575/2013”. It is therefore our understanding that article 9 does not apply to French banks.

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					We would like nonetheless to make the following comments: - Intra-group funding based on full or partial exemptions may be questioned by the drastic conditions specified in Annex I of this article. This would result in more interconnectedness within the banking sector which goes against the fundamental objectives of European banking reforms and may contradict banks' preferred recovery and resolution choices. - In the Banking Union / SSM context, these conditions are in contradiction with the core principle of free flow of capital and liquidity. Consequently, while the conditions laid down in Annex I may be justified for extra-SSM exposures, a full exemption should be automatically granted for intra-group intra-SSM exposures, with a possibility for the ECB to withdraw this exemption where it deems it inappropriate or misleading, on a case by case basis. - Some of the conditions specified in Annex I are particularly burdensome: for example, alignment of management of the risk on both intragroup exposures and third-party exposures (which is not consistent with the management framework of large integrated groups), provision of legal opinions, etc.
		Outflow rate applicable to trade finance off balance-sheet products	11	Amendment	We consider that the 5% outflow rate that the ECB intends to apply to trade finance off-balance sheet related products is 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).

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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 it 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 over 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), Trade Finance experts confirm that this happens very rarely, and would not be correlated to a potential liquidity crisis.
Hence liquidity outflows generated by these products are close to zero. We therefore support a 0% LCR 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 remind 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.

☒	☐	Liquid Assets - Central Bank Reserves	12	Amendment	Current formulation for Article 12 of the ECB regulation relating to Article 10(1)(b)(iii) of Commission Delegated Regulation (EU) 2015/61: Liquid assets should be amended to ensure that (b) exposures to central bank of UE non SSM countries or third countries that have introduced a LCR regulation have at least the same treatment than (c) exposures to central banks of third countries that have not introduced LCR requirements. Therefore it should be clarified for (b) that in the absence of a decision from NCA and Central Banks, the amount that exceeds the mandatory reserves that the credit institutions are required to hold with these central banks, can be included as level 1 assets.
☒	☐	Liquidity Buffer eligibility for shares	13	Amendment	Out of homogeneity with article 12 (1) (c) (i) of LCR Delegated Act, and as allowed by that article, we would like to add to the current ECB formulation the following sentence from Delegated Act: "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 jurisdiction".
☒	☐	Chapter V Transitional provisions	16-25	Clarification	It would be helpful if the ECB could clarify the concept of "national law" used in each of the articles regarding phasing of deductions and grandfathering of capital instruments. We consider that decision n°2013-C-110 communicated in December 2013 by the ACPR, the French competent authority, cannot be acknowledged as "national law".
☒	☐	Chapter V Transitional provisions	21	Amendment	The content of paragraph 3 of Article 21 modifies and reduces the 10-year phase-out period for deferred tax assets contained in regulations currently applicable.

					The DTA current schedule of deductions is actually more in line with an economic scenario of recovery for these assets. This requires a longer-term adjusted period, given the extraordinary nature of its generation as a result of the restructuring of the credit system. Additionally, such amendment breaks the principle of legitimate expectations, which requires that the authorities and the Administration are consistent with their own actions or their own past conduct respecting the legal expectations created. We would like therefore to ask to maintain the 10-year phase-out.
		Section II -Chapter 1 Capital waivers	3	Clarification	Eligibility criteria for capital waivers are very demanding and disproportionate in the SSM context, and seem in contradiction with the spirit of the Single Supervision Mechanism and the Banking Union. For clarification reasons, it seems useful to confirm that: - if a waiver has already been granted by the National Competent Authority prior to 4 November 2014, it continues to be valid - this article only applies to new waiver requests. Some of the documents required under the heading “Documentation related to Article 7(1) waivers" to be submitted are new and/or disproportionate: point ii) a legal opinion (the prompt transfer of funds or repayment of liabilities can be very easily demonstrated in most cases, in particular for subsidiaries in the European Union, by the legal structure, the past flows of funds or the absence of substantial minority interests in a subsidiary institution), 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. Similarly, items described in article 7(3), applicable to the parent institution, are disproportionate

					and should be removed (e.g. legal opinion). The documents required by the waiver procedures will lead to lengthening the process and to adding unnecessary administrative burden and could render the granting of a waiver unattainable in practice.
☐	☒	Section II -Chapter 1 Liquidity waivers	4	Amendment	For clarification reasons, it seems useful to confirm that: - if a waiver has already been granted by the National Competent Authority prior to 4 November 2014, it continues to be valid - this article only applies to new waiver requests. The maintenance of reporting requirements in the case of liquidity waivers is not in line with the spirit of the SSM and will entail significant operational burden for SSM banks. At a minimum, reporting requirements should be limited to significant sub-entities. Further, liquidity waivers within the Eurozone should be considered as “national” waivers as all participating institutions will be under the direct supervision of the ECB. Eligibility requirements for liquidity waivers are very demanding, and in excess of CRR Article 8. 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 would like to point out that European Commission already published in June 2014 a report (COM2014/327) taking stock of the absence of such restrictions. In addition, consideration of national insolvency laws is irrelevant as, in a liquidity sub-group, support between entities would need to occur much before the point of insolvency. While the assessment of operational and practical impediments is logically the responsibility of applicant banks, the evaluation of

					legal or regulatory issues is best performed by European authorities. If any remaining issue is identified, it should be addressed by legislators with a view to fostering the integration of the Single Market. As for the contracts required under Article 8(1)(c), the ECB should consider providing a common template for banks. Finally, the ECB should specify how institutions could assess the condition on (1)(iii) for waivers at national level while, so far, banks are not made aware of their SREP scores. Going through the waiver application process without being aware of this important pre-requisite may intensifies the deterrent effect of application conditions.
☐	☒	Section II -Chapter 1 Exclusion of consolidation (article 19(2) of the CRR)	8	Clarification	Non-material entities, above the threshold provided for in article 19(1) CRR (Min [€10M; 1% of assets] which is considered very low, must be supervised individually according a CRR-like prudential framework in order to be considered to be excluded from the consolidation perimeter. Minority investments too must comply with conditions of article 19(2). In any case, “where the undertaking concerned is of negligible interest only with respect to the objectives of monitoring credit institutions” (art 19 2-b). This measure seems difficult to implement in practice as the conditions laid out in article 19(2) are, for example, impossible to fulfil for entities that are not credit institutions. In the event these subsidiaries may not obtain a waiver, they will have to be consolidated at group level which is operationally burdensome and has no impact on prudential ratios (as the size of these subsidiaries is not significant compared to the size of a group).

					As a result there would be lots of process and extra work for no prudential impact nor improvement of supervisory practices. We believe the ECB should stick to the materiality principle and not add to the reporting burden of institutions. Furthermore, comparability of prudential frameworks is not appropriate for entities that are non-banks.
☐	☒	Section II -Chapter 5 Liquidity Compliance with liquidity requirements	3	Amendment	Footnote n°17 relative to the amendment of article 414 of the CRR seems inappropriate. The application date of January 1st, 2016 seems too premature for the NSFR when we know that the EBA report is expected at best on December 31st, 2015 in application of the article 510 (Net Stable Funding Requirements) of the CRR.
☐	☒	Section II -Chapter 5 Liquidity	4 and 5	Amendment	It is unclear in the context of the SSM, what would warrant a differentiated treatment when two entities are not established in the same Member State but both fall under the supervision of the ECB. In this case, criterion (a) of Delegated Act, Article 29-2 and 34-2 should be met when both entities are subject to and comply with CRR Part 6 (i.e. the LCR). 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 (calculated by taking by into account the required preferential treatment) for at least one year => which can be demonstrated starting as of October 2016 only. - liquidity management of the entities is deemed of high quality as evaluated in SREP => which can be demonstrated only once solo SREP assessments have taken place. In the absence of national liquidity requirements, can other alternatives to assess liquidity be proposed that allow credit institutions to benefit from this national discretion without waiting

until October 2016? It is unclear whether “national requirements” refer to a/ national liquidity ratios existing prior to the introduction of the LCR or b/ transitional measures whereby competent authorities accelerate the implementation of LCR. In the former case, it is unclear why compliance with LCR 1 year before the entry into application of the LCR Delegated Act should be required to achieve the benefit of these exemptions. It should be clarified that the “low liquidity risk profile” criteria could be met by demonstrating compliance with existing local liquidity ratios for 1 year prior to 1 October 2015

2) Besides, the contractual requirements demanded by the ECB would require the implementation of a contract model broadcasted by the ECB and containing various requirements. Credit institutions could take this model as a base to submit their request.

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 an obligation for institutions concerned to respect one or the other of these 2 requirements (if applicable).

4) In order to assess whether the liquidity risk profile of the liquidity-receiving entity is taken into account adequately”, the reference to the “daily position” of the receiving entity is not proportionate. Liquidity risk management and the frequency of monitoring should be tailored to the intrinsic volatility of the activity. As this article will be mainly used to ensure LCR compliance of (often small) specialised lending subsidiaries (leasing, factoring, consumer lending) which have very stable liquidity risk profile, it

					should not be required to put in place a very expensive and largely pointless daily monitoring process by the providing entity.
☐	☒	Section II -Chapter 5 Liquidity	4	Clarification	Article 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. Does this mean that banks could possibly benefit from preferential outflows for both intragroup deposits AND intragroup liquidity facilities?
☐	☒	Section II -Chapter 5 Liquidity	4	Clarification	Regarding Article 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. 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 unclear what kind of obligations the beneficiary of the liquidity facility might have.
☐	☒	Section II -Chapter 5 Liquidity Currency mismatches	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 addressed through the criterion i).
☐	☒	Section II -Chapter 5 Liquidity Higher outflow rate	11	Clarification	The ECB could usefully clarify how “empirical evidence” for outflow rates will be determined, and what would be considered an “aggressive marketing policy potentially triggering changes in market practices”.
☐	☒	Section II -Chapter 5 Liquidity Outflows with interdependent inflows	12	Clarification	We suggest to clarify the requirement to have the same gross amount taken into account in paragraph (i) by indicating that it is "the same gross amount before application of the standard and applicable weightings of inflows and outflows". The "same gross amount" condition in paragraph (i) should not prevent a pro rata application of the benefit of Article 26 when the legal, regulatory or contractual framework only provides for partial coverage of the outflows. The exact meaning of condition (iv) is unclear. The LCR stress scenario being calculated on a 30d horizon, it would be clearly disproportionate to require that the inflows occur before the outflow within the day. Delay in payment systems are irrelevant in this context.
☐	☒	Section II -Chapter 5 Liquidity Specialised credit institutions	13	Amendment	In §13 for the low liquidity risk profile, the ECB introduces a concept of interrelated inflows and outflow that is not required by article 33(5), which only requires "the timing of inflows to match the timing of outflows". For specialised lending subsidiaries this will be achieved by match-funding assets and liabilities on an aggregate basis (as these are generally retail, low-individual value loans). There will generally not be a contractual link between the maturity of each individual loan and the maturity of the matched funding. Accordingly, the ECB proposed criteria are too restrictive and

					would prevent the application of this article to the intended businesses (e.g. leasing and factoring subsidiaries).
☐	☒	Section III -Chapter 5 Liquidity	1	Clarification	Please clarify the purpose of this article. The information provided in the Short Term Exercise should not be taken as the only source to calibrate the outflow rates; we suggest to refer to banks' internal stress, as mentioned in article 23(2) of Commission Delegated Regulation 2015/61, in order to calibrate these outflow rates.
☐	☐			Choose one option	