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

Italian Banking Association (ABI)

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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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Name of Institution/Company Italian Banking Association (ABI)

Country Italy

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☐	☒	Liquidity waivers (Article 8 CRR)	4	Amendment	Section II, Chapter 1, ph. 4 (DRAFT GUIDE) In relation to Art.8 of the CRR "Derogation to the application of liquidity requirements on an individual basis ", the ECB states that it foresees to exclude reporting requirements from liquidity 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. The exemption for credit institutions that are part of a banking group and are in the same

					Member State should be provided for without the permission of the ECB as the supervisor, which according to the CRR, can derogate such exemption only for credit institutions which are located in other Member States. Moreover, point (1)(iv) of Section II, Chapter 1, ph. 4 (page 10) of the Draft Guide requires the calculation of the LCR requirement for each-entity of the sub-group, which is in contrast to what has been stated above, as the banking group submit the LCR on a consolidated basis, because of a business model characterised by a centralised management of the securities portfolio.. We would also point out that we deem excessively burdensome the requirements under point (3), which require the issuance of a legal opinion either by an independent party or an internal legal department.
☒	☐	Applicable percentages for deduction from Common Equity Tier 1 of significant investments in financial sector entities and deferred tax assets that rely on future profitability (ART. 478.3 CRR)	21	Amendment	Article 21 of the ECB draft regulation refers to Article 478 (3) of the CRR which provides for the possibility to temporarily deduct from regulatory capital the significant investments in financial sector entities and the deferred tax assets that rely on future profitability and arise from temporary differences, on the basis of increasing percentages until 2023 (100% deduction from January 2024). Article 21.3 of the ECB draft regulation accelerates the full deduction by five years (100% mandatory deduction from January 2019) and raises the percentage of deduction from 2016 (40% in 2016, 60% in 2017, 80% in 2018, 100% in 2019). The percentages' increase of deduction does not respect the legitimate expectations of Italian banks which were authorized by the national competent authority to apply lower percentages of deduction (respectively 20% in 2016, 30% in 2017, 40% in 2018 ,

					60% in 2019). We therefore call for an extended phase out period with full deduction applying from 2020 rather than 2019 and a more staggered approach (20% in 2016, 40% in 2017, 60% in 2018, 80% in 2019, 100% in 2020).
☒	☐	Article 467(3) of Regulation (EU) No 575/2013: Unrealised losses measured at fair value	16	Amendment	Article 16 of the Draft regulation establishes the percentages of unrealised losses measured at fair value which should be included in the CET 1 . Although the Italian law establishes the same percentages (Circolare 285, Part II, Section II, Chapter 14, 2) of those proposed by the ECB, the ECB has included in Art.16(1) unrealised losses on exposures to central governments classified in the AFS category according to IAS 39, whereas Art. 467(2) of the CRR establishes that competent authorities may allow institutions not to include in the own funds unrealised gains and losses on exposures to central governments classified in the AFS category if such treatment was applied before 1 January 2014. The Italian Authority has applied this option and the CRR doesn't empower the ECB to amend to this exemption until the endorsement of IFRS 9 into the EU law, amending IAS 39. The ECB is solely in charge of setting the applicable percentages. Therefore, we ask to delete the part of Article 16 stating "and including losses on exposures to central governments classified in the 'available for sale category' " and to reintegrate the part of Art. 467(2) of CRR " By way of derogation from paragraph 1, the competent authorities may, in cases where such treatment was applied before 1 January 2014, allow institutions not to include in any element of own funds unrealised gains or losses on exposures to central governments classified in the 'Available for Sale' category of EU-endorsed IAS 39. The treatment set out in the

					second subparagraph shall be applied until the Commission has adopted a regulation on the basis of Regulation (EC) No 1606/2002 endorsing the International Financial Reporting Standard replacing IAS 39 ". In fact the exemption provided for by the CRR prevents volatility of banks' CET 1, which otherwise will be affected by volatility in government bonds' yields and prices. Moreover, fire sales in the sovereign market might be caused, affecting Member States' funding.
☒	☐	Percentage of unrealised gains that should not be removed from CET 1 already as of 2016	17	Amendment	Article 17 of the Draft regulation establishes the percentages of unrealised gains that should be removed from the calculation of CET 1 . Although the Italian law establishes the same percentages (Circolare 285, Part II, Section II, Chapter 14, 2) of those proposed by the ECB, the ECB in Art.17(1) has applied those percentages also to unrealised gains on exposures to central governments classified in the AFS category according to IAS 39, whereas Art. 467(2) of the CRR establishes that competent authorities may allow institutions not to include in the own funds unrealised gains and losses on exposures to central governments classified in the AFS category if such treatment was applied before 1 January 2014. The Italian Authority has applied this option and the CRR doesn't empower the ECB to amend to this exemption until the endorsement of IFRS 9 into the EU law, amending IAS 39. The ECB is only in charge of publishing the applicable percentages. Therefore we ask for the deletion of the following sentence Article 17: "and including gains on exposures to central governments classified in the 'available for sale category' " and for the reintegration of the following part of Art. 467(2) of CRR " By way of derogation from paragraph 1, the competent authorities may, in

					cases where such treatment was applied before 1 January 2014, allow institutions not to include in any element of own funds unrealised gains or losses on exposures to central governments classified in the 'Available for Sale' category of EU-endorsed IAS 39. The treatment set out in the second subparagraph shall be applied until the Commission has adopted a regulation on the basis of Regulation (EC) No 1606/2002 endorsing the International Financial Reporting Standard replacing IAS 39 ". In fact the exemption provided for by the CRR prevents volatility of banks' CET 1, which otherwise will be affected by volatility in government bonds' yields and prices. Moreover, fire sales in the sovereign market might be triggered, affecting Member States' funding.
☒	☐	Article 495(1) of Regulation (EU) No 575/2013: Treatment of equity exposures under the Internal Ratings Based (IRB) approach	26	Amendment	The text of Article 26 of the Draft regulation is not updated to the EBA's RTS for the transitional treatment of equity exposures under the IRB approach (required by CRR,Article 495 (3)), which has been already published in the Official Journal on 11 June 2015.
☒	☐	Applicable percentages for deduction from CET1, additional Tier 1 and Tier 2 items	Art.20(3)	Deletion	Italian applicable percentages are aligned or stricter than those currently proposed by the ECB. If the ECB proposed approach to have predefined percentages for deduction unless stricter ones are set by national law was confirmed, this would jeopardise the level playing field to the detriment of banks located in countries which apply a stricter regime (such as Italy). We therefore propose the deletion of Article 20.3.

☐	☒	Cross-border liquidity waivers	Chapter 1 paragraph 3	Amendment	We deem the request to maintain 75% of HQLA in the subsidiaries as too restrictive. The ECB argues that the Banking Union is not completed and therefore only a partial waiver can be granted. Abi on the contrary regards the Banking Union as almost complete (the only missing elements are the European DGS and a fiscal back stop to the SRF) therefore the HQLA that has to be maintained in the subsidiary should be considerably lower than 75%.
☒	☐	Large intra-group exposures	Art.9(7)	Amendment	We would suggest adding the following additional phrasing for Art.9(7): Where an option under article 493(3) of regulation (EU) No 575/2013 is exercised by a Member State the ECB shall apply the national law and hereby exercise any discretion that such national law grants to competent authorities.
☒	☐	Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items - Article 471(1) of Regulation (EU) No 575/2013:	Art.18	Deletion	In order to maintain the appropriate, longer, phased-in period conceived for capital charges for non conglomerated institutions upfront insurance risks, with the aim of avoiding that different organizational choices result in the application of different rules, we request to NOT shorten the 471 CRR transitional provision, or to fully delete the article 18 considering that: • the Regulation (EU) 1024/2013 (SSM) does not seem empower ECB to substantially modify the content and disposition of primary rules adopted by the Parliament, the Council and the Commission, whereas the regulation of a supervisory authority should operate exclusively in the areas and in the perimeter provided for by such primary dispositions; • such modification affects the legitimate expectations of

					institutions, that have already planned and targeted their capital requirements on the basis of the current regulations for a period far longer than 31 dec 2017; • the shortening of the phase out period set forth by art. 471 CRR would negatively affect the share market price of the securities to be dismissed .
☐	☒	Methods for prudential consolidation (article 18.2 CRR)	Chapter 1 - Consolidated supervision and waivers of prudential requirements - point 3	Amendment	The issue refers to Article 18.2 of the CRR and it is treated by the ECB in the third section of the draft Guide (chapter 1 - Consolidated supervision and waivers of prudential requirements - comma 3). We would suggest to modify the statement relative to "proportional consolidation" that, given the possibility of its recognition by the NCA, the ECB declared it will never adopt. More specifically, we would suggest to preserve the current treatment of a possibility, subject to “case by case” authorization by the ECB, as it is foreseen for other issues in the same document. The underlying logic is that, in the case of a pure financial holding company that controls a banking group or a bank (the holding company having no other assets/significant risks, other than being the reference "shareholder" even if not totalitarian) a full consolidation, despite all the risks are on the controlled bank, would carry on the holding company the risks of the bank in front of only a portion of the third parties’ capital (that nevertheless, according to both the bankruptcy regime and the BRRD, actually face such risks as they pertain only to the controlled bank).

				The ECB proposal, while being “prudential”, conflicts strongly with the establishment of a competitive "playing field", given that the bank would be seriously penalised, not just because of its actual capitalization compared to its risks, but due to an hindered controlling mechanism of the shareholder base. Moreover, as Total SREP Capital Requirement is a Pillar II requirement (not Pillar I ones), an increase of that threshold, despite impacts on the Overall Capital Requirement, would not have an impact on the distribution of the third parties’ capital, as defined in EU Regulation 575_2013, Article 84, providing for an additional penalisation on the bank and on its ability to provide credit.
☐	☐	Valuation of assets and off-balance sheet items (article 24.2 CRR)	Clarification	The lack of a single accounting language represents a major drawback for the Single Supervisory Mechanism (SSM), as the supervisory reporting is based on accounting data. An Uncritical acceptance and use for regulatory purposes of accounting data calculated in accordance with rules and methodologies extremely heterogeneous is no longer acceptable within the Banking Union, mainly because the ECB aims at building a single framework of supervision on the basis of these data. The ECB should therefore exercise the discretion provided for in Article 24, paragraph 2, of the Regulation on prudential requirements (CRR), which allows it to impose, for supervisory

				purposes, the use of IAS / IFRS to all banks of the Member States participating in Banking Union.
☒	☒	Subject matter and scope	Clarification	Abi overall welcomes the ECB initiative towards the harmonisation of National Options and Discretions. Nevertheless it argues that the scope of both the draft Regulation and the draft Guide should be made applicable – with due respect to the principle of proportionality - also to banks not under the direct supervision of the SSM. This is essential for maintaining a level playing field. In the event the Regulation and Guide could not be made applicable to all banks, the ECB should make use of its general power to issue general instructions to national competent authorities as per Article 6(5) of the SSM Regulation. The ECB should therefore provide guidance on how and when it intends to make use of this Article in order to ensure that the Regulation and the Guide are made applicable via national competent authorities to banks that are not directly supervised.