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

Spanish Banking Association

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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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Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	☐	Large exposures Exemptions	9	Amendment	Regarding Article 9(2) and Annexe 1 of the draft Regulation that specify the conditions for full exemption of intra-group exposures from Large Exposures requirements: • We support article 9 (7) of the draft Regulation, in order to respect the discretion already exercises by the Member States according to the article 400.2 of the CRR. Indeed, when the Member States have issued formal legislation to fully or partially exempt exposures incurred by an institution to its parent undertaking or subsidiaries (for a transitional period until the entry

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					into force of any legal act following the review in accordance with Article 507, but not after 2 January 2029), the ECB could not be authorized to remove this national legislation implementing this national discretion provided by the CRR. Removing this discretion would necessarily require that either the Member States concerned would modify their existing legislation or, alternatively, amend the CRR at European level. In this regard, only the European Commission is legally authorised to propose changes to the EU legislative framework. • However, when the Members States have not issued formal legislation according to the article 493.3 of the CRR, the ECB should assess carefully the impact of retroactive effect on these exemptions on the funding model of cross border institutions. We are of the opinion that the conditions laid down in Article 9(2), while it may be envisaged for extra-SSM exposures though drastic, contradict the core principle of free flow of capital and liquidity within the SSM. A full exemption should be automatically granted for intra-group intra-SSM exposures, with the possibility for the ECB to oppose this exemption in case it is deemed inappropriate or misleading as far as the supervision of the institution is concerned; but such refusal should be treated as an exception.
		Unrealised losses measured at fair value	16	Deletion	The proposed text withdraws the possibility, contained in Article 467.2, to allow entities to not include in any item of their own funds the gains and losses on exposures to central governments classified as "Available for sale" as far as the European Commission has adopted a Regulation to endorse the International Financial Reporting Standard to replace IAS 39.

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	This amendment is contrary to the text approved by the European Parliament in the Regulation, in which harmonization is postponed until the coming into force of IFRS 9 thus breaking the principle of legitimate expectations. The article would also bring about a double effect for entities; -A "cliff-edge" effect on the recognition of losses as a consequence of the shift in approach. -Introduction of an excessive volatility in the entities' equity. It all leads to legal uncertainty caused by the modification of a regulatory framework already approved and therefore it raises problems in entities' capital planning. Additionally, the elimination of this prudential filter may also activate the mechanism of additional valuation adjustments (AVAs) for the available for sale portfolios, given the size of these portfolios in the industry. This involves the application of more complex calculation method (core approach rather than simplified approach) with consequent implementation costs, capital consumption as well as the complications introduced in capital planning. Finally, the immediate recognition of gains and losses on these exposures may have procyclical effects and significant impacts on financial stability since sovereigns markets are still not stabilized and several external factors already threaten the risk premium. If gains and losses on these sovereign exposures have finally to be included in the common equity tier 1 calculation, it is preferable to require their inclusion only once a certain level of stability is ensured in the European Union.

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☒	☐	Unrealised gains measured at fair value	17	Deletion	Same reasoning as in the previous article, with regard to unrealized gains measured at fair value.
☒	☐	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	21.3	Deletion	The content of paragraph 3 of this Article of the draft 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.
☐	☒	Liquidity waivers	Section II: Chapter 1.4	Amendment	The Draft Guide explains that the ECB plans to exclude reporting requirements from liquidity waivers, meaning that they will remain in place. Considering that, by definition, supervisory reporting requirements are meant to check compliance with legal requirements, such an approach is illogical, if not illegal: supervisory reporting requirements can no longer be imposed once the waiver has been approved. It is, moreover, inconsistent with a centralised liquidity management approach which a waiver environment necessarily implies. Anyway, maintaining such reporting requirements would be burdensome for banks and reduce the attractiveness of a

					waiver substantially. We assume that the ECB is insisting on maintaining the supervisory reporting requirements as a means to monitor the liquidity situation of those banks which have received a waiver. However, liquidity monitoring is governed by different legal instrument than the ITS on supervisory reporting and it would clearly be illegal for a competent supervisory authority to use supervisory reporting requirements as a proxy. Should the ECB nevertheless wish to maintain the supervisory reporting requirements, it should at the very least we recommend at least maintain the reporting requirements only in respects of a few material entities or to require the "waived" entities to report only once a year for example
		Exclusion of proportional consolidation	Section III: Chapter 1.1	Amendment	The ECB considers that, for prudential purposes, full consolidation should be applied, even in cases where the liability of the parent undertaking is limited to its share of capital of the subsidiary and the other shareholders must and can meet their liabilities, as specified in Article 18(2) of the CRR. The ECB intends to reassess its policy, based on the criteria to be specified in the Commission Delegated Act which will be issued in accordance with Article 18(7) of the CRR. This policy is against art18.2 CRR where the proportional consolidation is allowed on a case-by-case basis. There are situations where the liability of the parent undertaking is limited to the share of capital that the parent undertaking holds in the subsidiary, the liability of the other shareholders is clearly established and its solvency is satisfactory that this policy stance

					would be disproportionate and even unfair to oblige to uses full consolidation for two reasons: a. It would mean that the institutions should bear all the risks of the subsidiaries regardless the fact they only are liable for a proportion. b. In addition, it would imply that only the capital provided by the parent undertaking is eligible whereas the own funds provided by other shareholders is only partially eligible (minority interest rules) though in real terms is available to absorb losses Finally, there are third countries whose national laws oblige than investments in strategic sectors such as the banking sector is done with national partners. Therefore, if the ECB decides to delete the proportional consolidation will hinder the investment in those jurisdictions
☐	☒	Exposures to public sector entities	Section III: Chapter 3.1	Clarification	The ECB intends to allow exposures to public sector entities to be treated as exposures to the central government in whose jurisdictions they are established, in cases where it assesses that there is no difference in risks. For this purpose, the ECB plans to communicate a list of eligible public sector entities. It would be essential, in our view, that the ECB takes into account in producing that list the input of the correspondent member state, including entities in third countries. It would also be recommended an available list at an early stage to avoid doubts arising about the weights to be used.
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