



**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

UniCredit SpA

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Telephone number

██████████

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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Draft ECB Guide on options and discretions available in Union law

**Template for comments**

Name of Institution/Company    UniCredit Group

Country                                    Italy

**Comments**

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Scope	0	Clarification	The Guide and the Regulation will be applied to banks under direct ECB supervision only. UniCredit believes that in the interest of financial stability and a level playing field, the rules set out in the Guide and the Regulation shall be applied to all banks. For banks that are not under direct ECB supervision, the ECB can reach this objective by issuing general instructions to national competent authorities. Therefore the ECB should set out clearly that it intends to make the content of the provisions of the Regulation and the Guide very soon applicable to banks which are not under direct



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					supervision by issuing general instructions to national competent authorities.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intra-group large exposures	9(7)	Amendment	Recital 34 of the draft Regulation sets out that where the Regulation grants options to Member States, the ECB should also apply the national law exercising such options. This entails that if an option is exercised by a Member State in a manner by which the national law attributes full or partial discretion to a competent authority, the ECB will exercise such discretion for those banks for which it is now the competent authority regardless if the national law refers to the national competent authority. The Regulation should therefore add the following wording to Article 9(7): "Where an option under Article 493(3) of Regulation (EU) No 575/2013 is exercised by a Member State the ECB will apply the national law and hereby exercise any discretion that such national law grants to competent authorities."
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exposures to central governments classified in the available for sale	Articles 16 and 17	Amendment	In order to respect the principle of legitimate expectations of credit institutions and in order to avoid a strengthening of the link between banks and their sovereigns (strengthening the link between banks and their sovereigns stands against the very objective of the Banking Union) the ECB should continue to apply a prudential filter in cases where such a filter has been granted by national competent authorities.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exemption from deduction of equity holdings in insurance companies from CET1	Article 18	Amendment	In order to respect the principle of legitimate expectations of credit institutions, the transitional period of the possible exemption as set out in Article 471 of the CRR should not be shortened.

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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Applicable percentages for deduction from CET1, T1 and T2	Article 20(3)	Deletion	Maintaining national rules that are stricter than the ones set out in the ECB draft Regulation compromise the level field between banks subject to the approach taken by the ECB and banks subject to stricter national rules. The maintenance of stricter rules might be arguable if the ECB also maintains existing less stringent national rules. However, this is not the case as the ECB eliminates national rules that are less strict but maintains national rules that are stricter. Further to this, the different treatment of goodwill deduction is one of the most relevant drivers for non-comparability of capital ratios of banks. Therefore the maintenance of stricter national rules should be eliminated, at least for the treatment of goodwill deductions.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accelerated deduction of DTAs that rely on future profits	Article 21	Amendment	The application of the principle of legitimate expectations should lead to the maintenance of the longer transitional period foreseen in the CRR. The fact that the shorting of the transitional period by the ECB causes problems with legitimate expectations is confirmed in Article 21(7) of the ECB draft Regulation. This Article sets out, that in the event of an not foreseen increase in the impact of the deductions which the ECB determines is material, credit institutions shall be allowed not to apply the accelerated deductions. UniCredit concern is twofold: on one hand the ECB gives no clear definition of a "material impact" giving scope for uncertainty, on the other hand the relief from accelerated deduction of certain banks and not others will raise a competitiveness issue and compromise the level playing field. Maintaining the longer transitional period of the CRR would eliminate both concerns and provide for a level playing field of banks under ECB supervision

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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cross border liquidity waiver (with reference to article 8 CRR)	Section II, Chapter 1 part 4	Amendment	The request for maintaining 75% of HQLA in the subsidiary is too restrictive and does not reflect the spirit of the Banking Union which has by now been competed to a large extent. At the same time banks are very different in their legal and business organisation. Some banking groups have opted for stand alone subsidiaries, whereas other banks have opted for fully integrated subsidiaries. Such different approaches will also be reflected in the resolution strategy (SPE versus MPE) of each banking group. Especially for highly integrated banking groups a maintenance of 75% of HQLA in Banking Union subsidiaries does not seem appropriate. Trapping liquidity in subsidiaries may even be harmful to effective early intervention as it shifts the balance too much to the subsidiaries' point of view, at the expense of lessening the resilience of institutions from a whole-group viewpoint. The ECB should therefore develop an approach that allows to better reflect the business model and the degree of integration when setting a minimum of HQLA that has to be maintained in a subsidiary.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Methods for prudential consolidation	Section III, chapter 1 part 3 (reference to article 18 CRR)	Amendment	Instead of entirely ruling out the proportional consolidation method, the ECB should maintain the use of such method, but subject to its authorization under the fulfillment of conditions which would need to be defined by the ECB Guide.
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