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

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- 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 Assosim

Country Italy

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	☐	Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items - Article 471(1) of Regulation (EU) No 575/2013:	181	Amendment	Assosim believes that the deadline of the exemption period should remain 31 December 2022, as stated in Article 471(1) of EU Regulation No 575/2013 (CRR). It is worth mentioning that, under Article 4(3), second subparagraph, of SSMR, the ECB is entitled to adopt regulations “only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred upon it” by the Regulation itself. Please, consider also that, under Article 9(1), second subparagraph, of SSMR, the ECB may enjoy the powers

					granted to NCAs, “unless otherwise provided for by” the SSMR itself.To this regard, NCAs’ regulatory options and discretions have the aim of implementing EU banking law and not the one of organising or specifying the arrangements for the carrying out of the ECB tasks under the SSM. Therefore, the ECB cannot make use of the above-mentioned regulatory powers. Consequently, the reduction of the period granted by a "transitional provision" cannot be achieved through the regulation of a supervisory Authority that must operate exclusively in the areas and under the mandate provided for by the applicable law. In this respect, please see also the attached legal opinion by Prof. Eddy Wymeersch.
☒	☐	Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items - Article 471(1) of Regulation (EU) No 575/2013:	182	Deletion	The reduction of the period set by the aforementioned "transitional rule", changing de facto the relevant applicable provision, would jeopardise the level playing field and the spirit of the Danish Compromise, benefiting entities that belong to financial conglomerates (which would continue to apply the provisions of Article 49 of the CRR) to the detriment of other institutions. Moreover, if the ECB were empowered to exercise a regulatory discretion for significant credit institutions only, this might jeopardize the level playing field in the banking system of the relevant Member State. Indeed, if the ECB and the NCA exercised the options and discretions differently for, respectively, significant and less significant credit institutions, the own funds requirements of these institutions would be divergent. The ECB proposal would negatively affect the legitimate reliance by institutions on the applicable legal framework, as they already planned and targeted their capital requirements on the basis of the

					current applicable regulation. Please, consider that the proposed timeframe could also lead entities to sell their stake in insurance companies before the deadline (31/12/2017) with the effect to produce a market incentive to lower the estimate of such stake.
☐	☒	Deduction of insurance holdings	Chapter 2 - Own funds - paragraph 4	Clarification	In order to safeguard the "level playing field", the provision in comment should also discipline the insurance holdings falling within the scope of article 471 CRR. Should it be so, the following treatment would apply: (i) In cases where permission for non-deduction has already been granted by the national competent Authority prior to 4 November 2014, the institutions may continue not to deduct the relevant holdings on the basis of that permission provided that appropriate disclosure requirements are met. (ii) In cases where the institution plans to submit a request to the ECB for such permission, the ECB will grant permission provided that the CRR criteria and appropriate disclosure requirements are met.
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LEGAL OPINION

BY
PROF EDDY WYMEERSCH

THE REGULATIONS ON OPTIONS AND DISCRETIONS IN THE BANK-INSURANCE SECTOR

The present opinion serves to analyse to what extent the ECB's proposal modifying the conditions for holding equity stakes in insurance companies respect the Union law and principles.
It does not purport to deal with any other provision of the proposed regulation.

Summary

The proposed regulation of the ECB aiming at the abolition of article 471(1) CRR raises several objections:

1. **This measure cannot be adopted in a regulation for lack of legal basis;**
2. **The harmonisation of EU banking laws should be undertaken by legislative measures; this measure is not creating a level playing field;**
3. **The proposed measure affects an insurance company, a subject for which the ECB is not competent according to the TFEU;**
4. **The proposed measures introduces inequality between conglomerates and other insurance holdings; it prejudges on a future Commission proposal for conglomerates;**
5. **The decision to abrogate article 471(1) should be based on an individual assessment; the Danish compromise as reflected in level 1 legislation should be respected;**
6. **Due process and the cumulative effect of different regulations should be taken into account.**

***

A. Analysis of the CRR provisions 49(1) and 471 (1).

1. Both articles deal with the deduction of equity holdings[1] in i.a. insurance companies by banking institutions from the own fund requirement CET 1 applicable to the bank.
Article 49(1) contains the requirement for non-deduction on a permanent basis as applicable to a parent or holding institution in a financial conglomerate. The conditions may be summarised as follows:

   - A holding in an insurance company;
   - included in supplementary supervision under the conglomerates directive;
   - prior permission from the national supervisor;
   - guarantees as to integrated management, risk management and internal control;
   - the participation is held by the bank, a parent entity or a subsidiary of one of these. ("group holding").

2. Article 471 (1) CRR is part of the transitional provisions of the CRR. It states the conditions for the non-deduction for a predefined period, being 2014- 2022.
The conditions are comparable as under article 49(1): prior permission, direct or group holding. The condition on internal controls is formulated somewhat differently.

[1] "Own funds instruments".

In addition, there is a ceiling of 15% of CET 1 instruments issued by the insurance company. This illustrates that only relatively small blocks are viewed.
The amount of the equity so held is less than the amount held in CET1 instruments of whatever nature in the insurance entity.

3. According to article 18 of the proposed Regulation of the ECB, the exemption of equity holdings in insurance companies, as mentioned in article 471(1) CRR will apply from beginning 2016 to end 2017. From 2018, these holdings will be deducted from CET 1. This means effectively putting an end to the regime of article 471 (1) CRR. This will be done by an ECB regulation. This regime supersedes national regimes as granted by the national prudential supervisors.
According to press releases, also reflected in the proposed regulation, the two main priorities for the ECB in proposing this regulation are the regime of article 471(1) and that of the Deferred Tax Assets.

B. Power of the ECB to adopt regulations

4. The ECB in its capacity of prudential supervisor has the power to adopt certain "regulations" with direct binding effect in the member states and for the addressed entities. This power is laid down in the SSM Regulation. It is useful to give an overview of the different provisions that grant regulatory power to the ECB. One could admit that the power to regulate is a limited one for the ECB, as the basic regulatory power would normally pertain to the Commission or to the European Legislature, acting on the basis of article 290-291 TFEU.

The SSM regulation refers in the recitals in two instances to the regulatory powers mentioned in the Treaty by referring to article 132 TFEU dealing with the powers of the ECB. In the recital § 32 of the SSM Regulation it is stated: " The ECB should exercise powers to adopt regulations in accordance with article 132 of the TFEU and in compliance with Union acts adopted on the basis of EBA drafts and subject to article 16 ESA regulation". Article 16 deals with 'Guidelines and recommendations". This reference to article 132 TFEU has not been mentioned in the Regulation itself.

5. Several provisions of the SSM regulation refer to "regulations". It is important to analyse to what extent these provisions related to the matter of Options and discretions, as laid down in the CRR.
In the Recital § 32, it is clarified that the exercise of powers to adopt regulations by the ECB " should not replace the exercise of those tasks by EBA and should "therefore exercise powers to adopt regulations in accordance with article 132 of the TFEU and in compliance with Union acts adopted by the Commission" on the basis of EBA drafts. Article 4(3), 2nd § also contains this idea, i.e. that the " binding regulatory and implementing technical standards developed by EBA and adopted by the Commission " also apply to the action of the ECB. In clear, this means that the ECB has to abide by the regulation adopted by the Commission, as these regulations will be based on EBA Drafts.

The reference to article 132 TFEU is puzzling. First it is only mentioned in the Recital, not in the text itself of the SSM regulation. Article 132 TFEU grants regulatory powers to the ECB on the basis of different articles of the TFEU, including article 129(4). But the list does not include article 129 (6), which constitutes the – for some still controversial- basis for the SSM. The point has been remarked in legal literature. The absence of a reference to the Treaty basis for SSM regulatory competences puts in doubt the competence of the ECB to adopt an overarching regulation dealing with a considerable part of the prudential regulation that moreover is rooted in the CRR, a regulation adopted by the EU legislators.

6. If article 132 does not convey to the ECB the power to adopt regulations, one should analyse whether this power has been laid down in other provisions of the SSM regulation. Several provisions make reference to the regulatory power albeit under restrictive conditions. The overview is as follows:

- Article 4 (3) of the SSM Regulation gives the ECB the power to adopt guidelines and recommendations, and also regulations but, as far as regulations are concerned, but "only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred on it by this Regulation". These "arrangements" refer to mainly organisational matters, including administrative procedures which a regulation will "organise to the extent necessary" and this "for carrying out the tasks conferred to it by the Regulation". This provision does not contain the power to modify significant options in the field of prudential supervision laid down in a Regulation of Council and Parliament. The action of the ECB under article 4(3) is entirely viewed – see "to that effect" in article 4(3), 2nd al - in the perspective of the application of Union law, not its modification.

7. Article 6 § 5 (a) states that "within the framework defined in § 7… the ECB shall issue regulations, guidelines or general instructions to national competent authorities, according to which the tasks defined in article 4 … are performed and supervisory decisions are adopted by national competent authorities".
It adds that " such *instructions* may refer to the specific powers in article 16(2) for *groups* or categories of credit institutions for the purposes of ensuring the consistency of supervisory outcomes within the SSM".
This framework is further developed in § 7 as "a framework to organise the practical arrangements for the implementation of this article". It deals with criteria for assessment methodology, procedures, and similar subjects. Here again, this cannot be the basis for fargoing changes in the supervisory regime.
It may be likely that the harmonisation of the national supervisory practices, including the national options and discretions could qualify for the harmonisation effort. However in this field, the ECB is only entitled to give "instructions", not to impose regulations.

Article 33 gives the ECB the power to adopt regulations and decisions containing " the detailed arrangements for the implementation of the tasks conferred to it by this Regulation". This very broad empowerment only organises the supervisory functions that have been conveyed to the ECB, but does not allow the ECB to modify the existing regulatory system.

Other provisions of the SSM regulation refers to the regulatory powers: article 25 giving the ECB the power to set up a mediation panel, article 26(7), relating to the requirement to adopt regulations by qualified majority. Article 33 (2) deals with the "detailed operational arrangements" for its own functioning, and 33(6) on voting until the 31 December 2015. These different references to "regulations" are not material in the present context.

Conclusion

8. **The SSM regulation makes several references to the regulatory powers of the ECB. This power is limited in the SSM regulation, in order to avoid the ECB acting in lieu of the EBA or the Commission. The power is a dedicated one, and cannot be used for other purposes than the one for which it has been granted according to the text of the SSM regulation. Whether the ECB has the powers to adopt a generally applicable regulation putting an end, in a wholesale manner, to all national options and discretions should therefore be seriously doubted.**

In fact it is thus evident on the basis of Recitals § 19, § 34 and article 4(3) of the SSM Regulation that, while the ECB may be acknowledged as the competent authority legitimately empowered to take the decisions on the various options and discretions, granting or rescinding exemptions based on the review of the conditions laid down (i.e. for art. 471), it does not seem to be empowered to change the timescale of application of such options & discretions as laid down by first-ranking European regulations (CRR) which can only be altered by regulations of the same ranking.

C. The proposed regulation aims to harmonise national banking laws

9. The proposed regulation reduces the transition period provided in article 471(1) from 7 years to 2 years, i.e. from 2016 to 2022, against as proposed from 2016 to 2017. This abrupt intervention cut across the planning of banking groups holding insurance holdings. The confidence that market participants could have in the provision of the CRR has been severally shaken and cut across their business plan based on a longer transition period, allowing developing different solutions, including the outright sale or the inclusion in a conglomerate structure. As to the last solution, as long as the proposals for a new conglomerate directive have not been published, it has been impossible for the banks involved to adopt any firm position, except that of waiting. The ECB proposals would no eliminate this option.
It is not visible for what superior reasons that change has been adopted, except the objective of the ECB to achieve that the prudential supervision that it has to apply is as much as possible based on the same underlying legislation. This may of interest to the ECB, not of the addressees of the provision.
The reasoning is not convincing: on the one hand, the ECB will in any case have to take into account the national banking laws whether or not adopted in transposition of the European directives. This has been stated expressly in article 4(1) 1^{st}§. It is also a fundamental characteristic of the cooperative model on which the SSM is based (article 3). In the proposed regulation, the ECB attempts to deal with what it considers the “low hanging fruit”, but without explaining the substantive policy on which its proposal is placed. On the other hand it cannot modify unilaterally national laws, and the reliance that market participants have been placing in these.
If one can understand the difficulty for the ECB in applying the national banking law of 19 member States, it should propose the appropriate initiatives to have the European legislatures adopt the necessary changes, rather than moving unilaterally in derogatory way.
In the same sense, there is no convincing motivation why the ECB’s action moves towards the abolition of these national derogatory regimes, while many other specific features of national laws are maintained. It is only by making progress in a wider revision of these national laws that durable progress can be made. This should be undertaken respecting the Union legislative mechanism, also a guarantee for democratic legislative work.

In addition, the ECB pretends to move in the direction of a more level playing field. However it looses out of sight that it may be levelling the playing field for the euro area, but not for the entire Union. By strengthening the regime in the Euro area, it will weaken competition with the European jurisdictions that are outside the Euro area. Here too, only Europe-wide further harmonisation can offer a balanced solution.

D. Regulation affecting insurance companies

10. Generally spoken, the ECB has no competence for dealing with insurance companies, these having been excluded in article 127 (6) of the Treaty. This explains several features of the regulatory structure, such as the absence of the ECB from the Board of Supervisors of the European Insurance and Occupational Pensions Authority, EIOPA.
The abolition of the national options of article 471 (1) of the CRR, as proposed in the ECB regulation, is not only relevant for determining the capital requirements for the shareholder of an insurance company, but also touches upon the position of the insurance company in which the shares are held itself. The consequence of the abolition of the option of article 471(1) is making ownership in an insurance company of any kind much more expensive in terms of own funds. As a consequence, existing holdings will have to be divested. The disposal of the insurance equity will affect the insurance company concerned, in terms of its business model – e.g. when the group companies owned by the holding company cross sells products delivered by the insurance company, offering an overall insurance coverage relating to certain other transactions, such as real estate transactions, or automobile purchases with retail client in affiliated companies. These effects are underlying the transitory regime of article 471(1) CRR, granting a sufficiently long transition period allowing orderly restructuring. This long transition period has obviously not been considered by the draftsmen of the regulation, which simply does away with the regime over a much shorter period of time.
Also, the effect of a liquidation of a significant package of equity in an insurance company may be quite difficult, certainly under the present market conditions. This would push down

the price and inflict damage that can be avoided by allowing a longer transition period. Market stability would not be served.
The assessment to what extent these transactions will affect the insurance company and its activities belongs to the responsibilities of the insurance supervisor and cannot be decided by the ECB, and certainly not unilaterally. The Recital 31 and article 3(1) of the SSM regulation states clearly that the " ECB should therefore be required to cooperate closely with EBA, ESMA and EIOPA… and the other authorities that are part of the ESFS". Obviously no formal consultation with the national insurance authorities, or with EIOPA has taken place. It would not be a good example of cooperation within the European System of Financial Supervision (ESFS), if action would be adopted unilaterally by one of the authorities involved.

Conclusion

11. By taking action gravely affecting a group related insurance company, the proposal fails to appreciate the institutional context in which decisions affecting insurance companies should be considered, and run contrary to the cooperation duty within the ESFS.

E. Unequal treatment of insurance equity holdings

12. With respect to the application of 49 (1) CRR, the ECB proposes to maintain the derogatory regime[2]. To achieve that outcome, the ECB refers to the future conglomerates directive, a proposal for which has been announced since 2012 but for which no plans have been published yet. According to a Commission message to Parliament, the Commission will investigate how double gearing can be avoided while insuring sufficient capital in the insurance entity[3].
According to the Explanatory Memorandum relating to the proposed regulation, the application of the conglomerates directive should not imply a "regulatory advantage" but the latter is not explained[4]. Comparability of CRR ratios between conglomerates and non-conglomerates would not be reduced. For these conglomerates, the previously granted permissions will continue to be valid as full deduction was postponed because another measure would have a "significant impact"[5], while disclosure requirements will suffice. The inconsistency between the regime of the conglomerates and that of article 471(1) is striking and this notwithstanding the higher risks[6] [7].
With respect to article 471(1) the same explanatory memorandum motivates the ECB's decision to terminate the derogation by the "cliff effect" as the option will be eliminated in 2018. This cliff effect is rightly pointed at, as it may affect the regular functioning of the market in equity of both the holding and of the insurance company, and prevent balanced refinancing of the disposal. It may also upset the business model developed at the insurance entity taking into account synergies developed with the bank holding company. However, by imposing a short-term approach to the disposal of a significant holding in the insurance company, the ECB proposed regulation creates the cliff it wants to avoid. Not only are there no arguments given for eliminating article 471(1), but the cliff effect is one the ECB is creating itself by limiting the transition to 2017. Nothing prevents the ECB to opt for a more gradual transition, spread over the years 2016 to 2022, with adequate monitoring of the transition and the equivalent capital requirements.

This reasoning stands in sharp contrast with the one followed for article 49 (1), which allows for the ECB to further determine how the CRR will be applied. Although in both cases, equity is held in insurance entities the developments of which may have a direct impact on the banking entity, even if the holding is relatively limited. The business model of both entities should be taken into account on an individual basis. Moreover, under the present statement

[2] See explanatory memorandum to the proposed ECB regulation, p. 16.
[3] See the Commission message to the Parliament, 20 December 2012, Com (2012) 785 final.
[4] See Explanatory Memorandum, p 16.
[5] See Draft ECB guidelines p 10.
[6] See Draft ECB Guidelines p. 16.
[7] See the Commission message to the Parliament, 20 December 2012, Com (2012) 785 final referring to 'group risk".

of development of a new conglomerate directive, efforts could be considered that could reserve an coherent system of regulation whether the equity holding qualifies for a qualification of conglomerate or not. A group-wide form of supervision might usefully be developed, irrespective of the way these have been structured. By prejudging on possible alternatives, the ECB has eliminated possible other solutions, thereby curtailing the options that the Union legislature could eventually develop. Although not being competent for or particularly familiar with the insurance industry, the ECB proposes to adopt measures that may pre-empt further initiatives of consistent legislation addressed to the insurance sector. Therefore the ECB has not chosen the way that is best suited to the future development of the bank-insurance structure. At the same time it considers that with respect to the conglomerates, the matter can be dealt with according to the disclosure based instruments of the applicable directives[8]. The difference of treatment is clearly unbalanced,
The risks addressed by the proposed regulation can more effectively be avoided by adopting a gradual system of reducing these equity holdings, if necessary. In that case the negative effects for both the holding entity and the insurance company in which the equity is held, will be considerably limited, allowing for a smooth transition and minimum effects on the relative equity and product markets and hence on financial stability.

Conclusion

13. **By imposing a much harsher regime to the 471(1) equity holdings than those under article 49 (1), the proposed regulation introduces a discrimination for which no credible arguments are put forward. Moreover it imposes an option that may prevent further legislative developments, thereby pre-empting the freedom of action of the Union legislature. If the ECB want to eliminate the options and discretions, it should start a procedure for having decisions made by the legislature.**

F. The power of the ECB to terminate the exception of article 471(1).

14. The ECB in its consultation has announced that it would allow the benefit of article 471 (1) to continue between 2016 end 2017[9] and this in accordance with national law. From 2018 on, equity holdings will be deducted from CET 1, meaning in most cases that they will have to be divested. Decisions taken under article 49 (1) CRR on the other hand will remain in force.

The ECB statement is cast in the form of a regulation and therefore will be applicable without any further supervisory decision. Whether the ECB has the power to adopt a regulation of that kind has been discussed before (A). Here attention will be paid to the power of the ECB to terminate the regime of 417(1) by way of supervisory decision, addressed to the individual bank. According to the TFEU, decisions are binding on the parties to which they are addressed[10].

The national competent authorities grant the exceptions under article 49(1) and 471(1) what is the result of their investigation in the position of the bank or other holding entities. It is not the result of an automatic rule, but is - at least - based on the assessment of the adequacy of internal management, risk management and internal control in the insurance company under the regime of article 49(1)(d). Under article 471(1) similar judgmental criteria are followed dealing with risk control or specific financial analysis procedures. This difference in terminology between the two provisions can probably be attributed to the limited nature of the equity holding that would not allow for full control of the insurance company.
The application of these exceptions is entirely dependent on a position that is adopted by the national supervisor, on the basis of an individual decision taking into account the assessment of the risk factors mentioned in article 471(1) (b). Depending on the specific risk profile of the group, it cannot flow from a generally applicable regulation.

[8] See ECB Guideline p 16.
[9] Article 18 of the proposed ECB regulation.
[10] Article 288 TFEU.

The proposed regulation eliminates the system whereby equity holding can be risk weighed, and are not deducted from capital. The approach has been the subject of very active discussions that led to what is widely known as the "Danish Compromise" and is reflected in the CRR. This agreement concerned all equity holdings in insurance companies, whether part of a conglomerate or not. The conglomerate regime was due to be reviewed, but that has still not happened and therefore the present CRR represents the state of affairs. The non-conglomerate regime was a pendant of this more general compromise.
The question is whether the ECB can unilaterally abolish a regime that has been the subject of a very actively discussed compromise between the Member States and in the Parliament. By modifying the regime that has been agreed at the level of the EU legislature, the ECB would interfere with sovereign decisions adopted by the legislature. This would run contrary to the balance of powers laid down in the Union treaties.
This idea has been clearly expressed in the Recital 34 to the SSM Regulation: " the ECB should, when adopting guidelines or recommendations or when taking decisions, base itself on, and act in accordance with, relevant binding Union law". Article 4(3) states the same idea as follows: To that effect[11], the ECB shall adopt guidelines and recommendations and take decisions subject to and in compliance with the relevant Union Law and in particular any legislative and non-legislative act, including those referred to in articles 390-291 TFEU". By changing the time line for which the derogation of article 471(1) can be granted, without a previous modification to the CRR, the ECB has not acted in accordance with Union law[12].

If there would have been an express delegation for the ECB to do so, one could have accepted this. However, there are no indications in that sense, rather to the contrary and therefore the Danish Compromise should still be held to apply. It seems dubious that through the back door, the ECB can modify one of the core elements of the CRR, an element that was adopted after intense discussions and notwithstanding strong opposition. This is the more so as the SSM regulation is based on the continuity of the existing national regulatory regimes.

Conclusion

15. **The hypothesis that the ECB would take an individual decision disregards the political agreement and is contrary to the Danish compromise. It would run against the Treaty based attribution of legislative powers to Parliament and Council.**

G. Due process

16. The termination of article 471(1) seriously damages the confidence in the application of the CRR. Up to the summer of 2015, no mention was made of any change in the approach to this matter. By suddenly modifying the longer-term perspective, the ECB breaches the confidence in and reliance on the supervisory policies, as according to article 471(1) it could be expected that the exceptional regime could last until 2022.
Reliance on the expectations created by the applicable regulation should be respected as a crucial element of the Union legislative system[13]. Regulations by the European Parliament and the Council can only be validly modified by regulations adopted by the same legislative bodies.

The proposed regulation has not been submitted to a cost benefit analysis, at least none has been published[14]. An impact assessment has been undertaken and led to the conclusion that the whole proposed regulation would not have a "material impact on banks balance sheets

[11] This refers to the previous paragraph where it is stated that the ECB shall apply Union law and the transposing national legislation.
[12] See also Recital § 19.
[13] "Due respect for legitimate expectations" was mentioned with regard to the options to be removed by individual decision: see Explanatory Memorandum, pp 11 and 12. It is unclear why this respect is not shown for the general decision to abrogate article 471(1).
[14] See article 4(3) 3rd§. Reference can be made to the Better Regulation Guidelines, which might have served as a model.

and operational costs". The information published is rather limited and does not relate to the application of article 471(1)[15], probably on the presumption that the provision should be removed in any case. This unbalanced approach should be regretted.

A more general consideration relates to the changing prudential requirements: in 2013 when the CRR was adopted, there was no view on the cumulative effect of different other capital requirements that have been introduced in later measures. This applies to the MREL[16]; the leverage ratio had not been set, while the effects of TLAC still have to be outlined. In addition under the BRRD, the authorities have the right to increase the capital requirement to take into account risks from the holding companies. It is therefore premature to address one factor of risk, without having a view on all other measures that have since then been introduced, or have become operational. By now taking this unilateral measure the proposed regulation adopt a partial view that does not take into account the individual situation of the holding company nor the changed requirements since the adoption of the CRR.

General conclusion

17. **The abrogation of article 471(1) of the CRR by the ECB's proposed regulation should be reconsidered as the existing regime is not conducive to the public interest while its abolition would be a grave violation of previously agreed compromises and legitimate expectations.**

[15] See Explanatory Memorandum, p. 7; the conglomerates however, were assessed.
[16] See article 12, SRM regulation.