



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

Ministry of Finance of the Czech Republic

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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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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

Name of Institution/Company Ministry of Finance

Country Czech Republic

Comments

| Regulation | Guide | Issue | Article | Comment | Concise statement why your comment should be taken on board |
|-------------------------------------|--------------------------|-----------------|---------|-----------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Large Exposures | 9 | Amendment | <p>Article 9 paragraph 6 states following "Credit institutions shall assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the Annexes to this Regulation, are fulfilled. The ECB may verify this assessment at any time and request credit institutions to submit the documentation referred to in the Annexes to this Regulation for this purpose."</p> <p>In our view, the first part of the paragraph "Credit institutions shall</p> |



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assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the Annexes to this Regulation, are fulfilled.” is superfluous, as in each paragraph of Article 9 is directly stated that the exemptions can only be used if conditions set in Article 400 (3) CRR are met, thus the fulfilment of the conditions is already incorporated in the legal text. If the text should be maintained, it has to be amended and stated as a requirement (see below).

Also, the second sentence of the paragraph 6 has to be amended. There are two fundamental reasons for undertaking the amendment: (i) there has to be imposed an obligation on the ECB as a regulatory authority to verify that credit institutions comply at all the time with the conditions specified in Article 400(3) CRR in order to be prudent, and (ii) according to Article 400(3) CRR, the ECB as a supervisory authority has to notify to and consult with the EBA about used exemptions.

Overall, the paragraph 6 of Article 9 has to be amended for prudential reasons in order to preserve financial stability within the EU, especially in the context of intragroup transactions. So we are proposing following amendment of para 6 Article 9:

"Credit institutions shall comply at all times with the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the Annexes to this Regulation. Credit institutions shall notify the ECB about meeting conditions specified in Article 400(3) of Regulation (EU) No 575/2013 and submit documentation referred to in the Annexes to this Regulation. The ECB shall verify that



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| | | | | | credit institutions comply with the conditions specified in Article 400(3) of Regulation (EU) No 575/2013. The ECB may also at any time request from credit institutions submitting the documentation referred to in the Annexes to this Regulation." |
| | | | | | Please, see comment for Article 9 paragraph 6 above. |
| | | | | | Annex I paragraph 3 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Large Exposures | Annex I | Amendment | 3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, the European Central Bank shall request from credit institutions to submit the following documentation..... |
| | | | | | Please, see comment for Article 9 paragraph 6 above. |
| | | | | | Annex II paragraph 3 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Large Exposures | Annex II | Amendment | 3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, the European Central Bank shall request from from credit institutions to submit the following documentation..... |
| | | | | | Article 9 and Annex I and II |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Large Exposure | Annexes | Clarification | Annex I and Annex II establishes procedures and necessary documentation for the credit institutions to declare to the ECB that they meet the conditions specified in Article 400(3) of Regulation |



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(EU) No 575/2013. However, the necessary procedures and documentation have only been introduced for exemption according to Article 400 paragraph 2 point (c) and (d) CRR. So there is a question whether in the case of remaining exemptions under Article 400 paragraph 2 CRR the credit institutions should implicitly follow the same procedures and documentations as set for exemptions under the point (c) and (d) of paragraph 2 Article 400 CRR or whether there should be introduced additional procedures and documentations for remaining exemptions under paragraph 2 Article 400 CRR so that the credit institutions are able to declare to the ECB that they are meeting the conditions specified in Article 400(3) CRR. In our view, this issue is necessary to clarify.



Clarification

Guide was introduced as “a non-legally binding instrument that provides guidance to supervisory teams on how to individually assess certain other options and discretions, which need to be decided on a “case-by-case” basis”. Generally, we would like to make a few remarks regarding the content of the Guide. Firstly, the content of the Guide is very broad and by its nature in many parts corresponds, in fact, extensively to a legal text. Thus, a large part of the Guide’s content should really be a part of Draft Regulation, which would indeed reinforce the legal certainty. Secondly, it is difficult to see any merits of the argument “decided on a “case-by-case” basis”, when the text is really so broad and rightly should remain so, but as a part of a Draft Regulation that provides supervisory teams with a broad framework. This broad framework will not prevent supervisors from making specific decisions on “case-by-case” basis about e.g. liquidity subgroups. Finally, the content of the Guide is rather very informative and intended for



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external users rather than for supervisory teams, which should really follow a much more detailed and prescriptive guide (single approach delivering a level playing field).

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