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

Národná banka Slovenska

Contact person

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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 Národná banka Slovenska

Country Slovakia

Comments

Regulation	Guide	Issue	Article	Comment	Concise statement why your comment should be taken on board
☐	☒	Liquidity waivers	4	Amendment	Proposed change: p. 12, para 2(i): "significant sub-entities or significant groups of sub-entities" should be replaced by "all sub-entities or groups of sub-entities" Explanation: Restricting the requirement to hold minimum amount of liquid assets only to significant sub-entities (i) jeopardizes financial stability by increasing potential vulnerabilities to abrupt liquidity shocks in case of SIs which do not fulfill criteria for significant sub-entities but still are important in their jurisdictions,

					(ii) creates uneven playing field for SIs and (iii) is not in line with Art 8(3)(c) CRR. In case that this comment is not accepted, at least all O-SIIs should be considered as significant sub-entities, which is also consistent with criteria for corporate governance on p. 34. The current definition of significant sub-entities is not well suited for smaller banking sector like Slovakia and significant sub-entities are selected only on the basis of the artificial criterion of three largest banks, without considering ant other indicators of systemic importance for the banking sector. In case of Slovakia, there is one O-SII which is not included in the three largest banks.
☐	☒	Liquidity waivers	4	Amendment	Proposed amendment: Liquidity waivers can only be granted subject to reasoned and formalized request of the management bodies of each particular entity which should be part of the liquidity sub-group, ensuring that they fully understand the implications of the liquidity waiver in the event that it is granted. Explanation: The aim is to ensure that the liquidity waiver is requested at both parent and subsidiary level while fully taking into account not only potential benefits but also risks. In addition, if it fully consistent with the analogous requirements for preferential liquidity outflows and inflows (see p. 25 and 28 of the guide).
☐	☒	Liquidity waivers	4	Amendment	Proposed amendment: The effect of liquidity waivers should be subject to sufficiently long transitional arrangement. In particular, the decrease of the minimum requirements on liquid assets from current level to 75 % LCR should be gradually phased-in during minimum horizon of 4 years. Explanation: The minimum amount of liquid assets at the level of 75% LCR represents significant easing of liquidity requirements for

					Slovak banks. They are currently subject to national liquidity requirements which are considerable stricter compared to EU LCR, even at 100 % level. In addition, these national liquidity requirements ensure that maturity mismatch risk which is one of the most important and increasing macroprudential risks in Slovak banking sector, is currently sufficiently mitigated by large volume of liquid assets held by banks. Immediate significant release of liquidity requirements could have therefore potentially large-scale adverse impact on financial stability. This topic is described in details in the Financial Stability Report - May 2015 (pages 51-61) published by the Národná banka Slovenska.
☐	☒	Liquidity waivers	4	Deletion	Proposed changes: Delete last paragraph on p. 12, referring to future decrease of the level of HQLA to 50 %. Explanation: As described above, the significant relaxation of liquidity requirements due to liquidity waivers in subsidiary-based banking sectors might significantly amplify potential impact of systemic liquidity risk. Therefore, future policy stance should be subject to thorough impact analysis on the level of individual banking sector without preempting its results at the current stage.
☐	☒	Capital waivers	3	Clarification	Proposed changes: In the first subparagraph of Chapter 1, paragraph 3 on page 5, it should be clarified that capital waivers can be granted only within the same Member State. "The ECB is of the view that the application of prudential requirements may be waived for subsidiaries of credit institutions, as well as parent credit institutions, located in the same Member State, following a case-by-case assessment and provided that the conditions set out in Article 7(1), (2) and (3) of the CRR are satisfied." Explanation: As the interpretation of Article 7 is not straightforward,

					this change would be benefitial in order to increase the readibility and avoid possible misinterpretation of this part of the Guide.
☒	☐	Large exposures-exemptions	9	Amendment	Article 400(3) of Regulation (EU) No 575/2013 states that competent authorities may only make use of the exemptions provided in Article 400(2) of that regulation where two conditions are met. Therefore by granting the exemptions in Article 400(2) the competent authority ascertains the fulfillment of the conditions laid down in Article 400(3). The competent authority cannot transfer the burden of proof on the fulfillment of conditions laid down in Article 400(3) on the institutions by granting the exemptions before verifying the fulfillment of the conditions laid down in Article 400(3). If the fulfillment of the conditions laid down in Article 400(3) is based on the judgment of the institution, which could differ from that of the competent authority, the institutions will not have legal certainty about regulatory requirement, which, which the institutions shall be subject to. Hence the draft regulation shall either be amended in order to require the verification of the fulfillment of the conditions laid down in Article 400(3) CRR by the competent authority before granting the exemption, or grant the exemptions from large exposures by decisions addressed to individual institutions and delete Article 9 from the draft regulation.
☒	☐	Large exposures-exemptions	9(2)	Amendment	We suggest to amend the limit on intra group exposures in such a way, the exposure of an institution to its parent undertaking, other subsidiaries of that parent undertaking or its own subsidiaries shall never exceed 100% of the institution's eligible capital. Exposures higher than 100% of institution's eligible capital can spread contagion in time of distress throughout the whole group and lead to default of otherwise solvent institutions. Unless the Banking

					Union is fully implemented also with the second (the second pillar is subject to transitional provisions until 2024) and third pillar (not implemented yet), such contagion can lead to shifting fiscal burden between Member States, which is undesired. We believe that there are no possible measures to adress the concentration risk exceeding 100% of institution's eligible capital so in this case the condition laid down in Article 400(3) will not be fulfilled. Adoption of the exemptions could worsen the situation in healthy subsidiaries of problematic financial groups. Subsidiaries, which currently have higher credit rating than their parent undertaking can be downgraded after the adoption of this exemption, which can have negative consequences on the financial position of the subsidiary.
☒	☐	Large exposures-exemptions	9	Amendment	Proposed amendment: The effect of large exposures exemptions in accordance with Article 400(2)(b) should be subject to sufficiently long transitional arrangement. In particular, the increase of the cap on intragroup exposures from 25 % to 100 % of own funds should be gradually phased-in during a minimum horizon of 3 years.
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NATIONAL BANK OF SLOVAKIA
EUROSYSTEM

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Member of the Bank Board
Executive Director
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Ms Danièle Nouy
Chair of the SSM Supervisory Board
European Central Bank
Public consultation on options and discretions
60640 Frankfurt am Main
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Bratislava, 16 December 2015

Dear Ms Nouy

We fully acknowledge the importance of the coherent and effective implementation of the prudential supervision of credit institutions based on the single rulebook across SSM countries. In this regard, we strongly support the tremendous task the ECB is facing and exercising in order to level the playing field for all SSM significant institutions.

For Slovakia, however, given the characteristics of the domestic banking sector, some of the proposals represent a significant relaxation of the regulatory landscape, which could lead to important consequences for financial stability. Hence, we would like to draw your attention to the following considerations regarding the banking sector in Slovakia and possibly in some other Member States as well.

1. **Distinctive features of the Slovak economy and banking sector**

   There are two key structural differences between the banking sector in Slovakia and the banking sectors of other SSM countries.

   First, all significant institutions in Slovakia are subsidiaries of SSM banking groups. Although these banks are crucial both as the main provider of funding to the Slovak economy (given the virtual absence of a local capital market) and for the financial stability of the whole financial sector, they have negligible significance at the Europe-wide level[1] as well as from the perspective of their parent banking groups.

Second, the Slovak banking sector follows a highly traditional business model, heavily focused on operations with domestic households and enterprises. These activities result in a growing maturity mismatch between assets and liabilities. This business model underlines the importance of having sufficient capital and liquidity buffers at the local level.

2. **Incomplete Banking Union**
   In our view, the further harmonisation of discretions leading to a relaxation of national prudential requirements in terms of allowing free flows of capital and liquidity not go beyond the progress in the completion of the Banking Union project. Otherwise, discrepancies are likely to emerge. For example, the capacity to absorb shocks at the local level is significantly reduced by the creation of cross-border liquidity subgroups for important banks and the exempting of all intra-group transactions from large exposure limits. Without building on the significant progress made in the area of Single Deposit Guarantee Framework and under the ten-year phase-in stage of the Single Resolution Framework, this process will lead to significant imbalances as the potential costs associated with such shocks will need to be borne by national public finances. This underlines the importance of aligning the regulatory treatment of all systemically important subsidiaries with progress in completing the Banking Union.

In line with the above, we believe that the harmonisation of the policy regulation across the SSM should not be at the expense of jeopardising financial stability in individual Member States. Bearing this in mind, we propose some suggestions and comments regarding the draft regulation and guide, focusing on the treatment of systemically important subsidiaries and transitional provisions, mainly in the area of liquidity waivers and large exposures.

A. Liquidity waivers

Given the above-mentioned importance of maturity mismatch risk in the Slovak banking sector, which is almost fully subsidiary-based, the introduction of liquidity waivers could result in a large-scale outflow of liquid assets, leaving a bank potentially exposed to any abrupt systemic liquidity shock. Given that national liquidity requirements are considerably stricter than those at the EU level, reducing the minimum amount of liquid assets to 75 % of the LCR represents a significant relaxation of current requirements.

In addition, the criteria in footnote 12 on page 12 of the guide, defining significant sub-entities subject to this requirement, fail to capture all banks that are significant at the national level in the case of a smaller banking sector, like that in Slovakia.

According to Article 1 of the SSM Regulation, the ECB is required to have full regard to the different types, business models and sizes of credit institutions. In addition, Article 8 (3)(a) of the CRR requires that the liquidity risk across the liquidity sub-group should be treated in a way that reflects the institution's importance in each Member State in which it carries out business (Article 86 of the CRD IV). Therefore, given the above mentioned specificities of the Slovak banking sector, we propose the following amendment to the part of the guide related to liquidity waivers:

[1] Banking sector assets in Slovakia account for only 0.2% of euro area banking assets.

(1) The requirement to hold liquid assets at the level exceeding 75 % of LCR should be extended to all SIs, or at least to all O-SIIs. Restricting the requirement to hold minimum amount of liquid assets only to significant sub-entities jeopardizes financial stability by increasing potential vulnerabilities to abrupt liquidity shocks in case of SIs which do not fulfill criteria for significant sub-entities but still are important in their jurisdictions, creates uneven playing field for SIs and is not in line with Art 8(3)(c) CRR. In addition, the reference to a possible decrease of this level to 50 % should be deleted in order not to pre-empt a future review of this requirement.

(2) Sufficient transitional arrangements should be in place which is in line with the paragraph (9) (p. 3) of the draft regulation, where the ECB acknowledges the need to allow for transitional periods where its exercise of options and discretions significantly departs from the approach taken by the national competent authorities prior to the entry into force of the Regulation.

(3) The granting of a liquidity waiver should be subject to an independent decision of both the parent entity and the subsidiary intending to create a liquidity subgroup, with a clear demonstration that any potential risks are understood.

We would like to point out that Article 8(3) of the CRR requires the agreement of competent authorities in different Member States where institutions of the liquidity sub-group are authorised in different Member States. This safeguard was introduced in order to guarantee that financial stability implications for individual Member States resulting from the creation of a liquidity sub-group are duly taken into account. As the ECB fulfils the role of several competent authorities in this regard, we encourage the ECB to give due consideration to the financial stability implications for individual Member States in their capacity as host competent authorities.

Large exposures

We believe that large exposure limits are the principal and most efficient tool in limiting concentration risk. We agree that exposures under Article 400(2) (a),(b),(d) to (k) are low risk exposures, which can be exempted from the large exposures limit as proposed in Article 9(1),(3) to (7) of the draft ECB regulation. However, we do not consider intra-group exposures (exposures in Article 400(2)(c) of the CRR) to be low-risk enough to be fully exempted from large exposure limits. Excessively high intra-group exposures, especially when in tandem with liquidity waivers, have the potential to create undesired interconnectedness and spread contagion at times of distress to healthy parts of the financial group. Unless the Banking Union is complemented with a fully implemented second and third pillar, this contagion could lead to the transfer of fiscal burdens between Member States.

Therefore we suggest amending Article 9(2) of the draft ECB regulation so that the exposure of an institution to its parent undertaking, other subsidiaries of that parent undertaking or its own subsidiaries is not permitted to exceed 100% of the institution's eligible capital. Again, sufficient transitional arrangement should be put in place.

From a procedural perspective, we would like to draw attention to the fact that the competent authority cannot transfer the burden of proof for the fulfilment of conditions laid down in Article 400(3) of the CRR (necessary for the granting of exemptions from large exposure requirements) to the institutions, since this could create legal uncertainty about which regulatory requirements apply to the institutions. Consequently, either the draft regulation should be amended in order to require that the competent authority verify the fulfilment of the conditions before granting the exemption, or Article 9 should be deleted from the draft regulation and exemptions from large exposures should be granted by decisions addressed to individual institutions.

The proposed wording of all the suggestions mentioned above together with an explanation can be found in the template.

Yours faithfully