



## Public consultation

### on the draft Regulation and Guide of the European Central Bank on the exercise of options and discretions in Union law

#### Questions and answers

#### 1 What is the purpose of the regulation and the guide? What do you want to achieve?

The purpose of the regulation and the guide is to lay out an SSM-wide policy on the exercise of the options and discretions available in the banking law of the European Union (CRR/CRD and delegated acts) to the competent authorities. Since November 2014, the ECB is the competent authority for significant institutions in the context of the SSM; as such the ECB has a clear mandate to decide on whether and how to exercise these options.

The regulation and the guide have been conceived with the overall objective to foster the harmonisation of supervisory practices and the establishment of a level playing field within the SSM area, in order to preserve financial stability and integration of the banking system.

An inconsistent exercise of options and discretions across SSM member countries, where not justified for example by national specificities, can contribute to fragmentation and risk in the banking sector. The regulation and the guide submitted in this consultation aim at implementing an appropriately harmonised treatment by the ECB, according to prudence and within the framework of Union law.

#### 2 What is the process for harmonising the different options and discretions available at national level?

A significant number of options and discretions included in prudential regulation under the remit of “competent authorities” have already been exercised on a national level before November 4<sup>th</sup> 2014. Within the framework of this project, the ECB has collected data on previous national implementation, as well as from international best practices and the indications arising from international standard setters and on the ongoing policy discussion in all the relevant international fora. Against this background, and building upon qualitative, quantitative and legal analysis, the ECB has formulated a policy stance and exercised the relevant options and discretions through the appropriate legal instruments.

### 3 How long will it take to harmonise the options and discretions you are focusing on in the regulation?

It is foreseen that the regulation is adopted by the decision-making bodies of the ECB and published in the Official Journal of the European Union around March 2016. From the moment the regulation takes effect, it becomes directly applicable to significant banks and the harmonisation process takes place.

### 4 Why are you putting forward two documents for the consultation? What is the difference between the two?

Two distinct instruments are submitted in this consultation: The first document, the regulation, is a binding legal instrument of Union law, which lays out legal obligations for the significant banks of the SSM related to the prudential treatment of certain “general” options and discretions. The second document, the guide, is 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.

### 5 Can you explain what you mean by “general” options and discretions, and options and discretions exercised on a “case-by-case” basis?

This distinction is based on how an option or discretion is to be exercised in practice: in the case of general options the ECB can take a policy decision which applies to all banks under its supervision without an additional specific assessment for each bank. For example, the option of whether an obligor is considered to be in default after 90 or 180 days of obligations past due is a general option, since the ECB’s decision between the two alternatives applies to all significant banks. Conversely, ‘case by case’ options or discretions require a specific assessment for each bank, which usually submit an application to benefit from an option. Waivers are a typical example of the ‘case by case’ category: the decision to grant a waiver of liquidity requirements is dependent on the liquidity structure and risk management that each bank has in place. Therefore, it requires a case by case assessment by the ECB, which verifies that the specific bank can benefit from the waiver.

**6**                    **How many options and discretions can be found in CRR/CRD IV and the LCR Delegated Act? How many are addressed in the two ECB documents? How many in each document?**

There is no official definition and enumeration of options and discretions in prudential legislation. The ECB has identified over 150 options and discretions in CRR/CRD IV including some laid down in the LCR Delegated Act for the purposes of exercising its supervisory tasks. Of all available options and discretions, the ECB focused on analysing those which fall under its competence as a supervisor within the SSM. The two documents submitted in this consultation include a policy stance on 122 options and discretions out of which about one quarter are exercised in the Regulation and about three fourths are addressed in the Guide.

**7**                    **Are you planning on addressing options and discretions not covered this time in the future? How long will it take you to fully harmonise the rules in the euro area?**

There are some options and discretions which will require future follow-up work, mainly actions to be undertaken by the EBA or the Commission, in order to form a concrete policy stance. In addition, there are some options and discretions where the ECB has to gain experience from the assessment of specific cases, in order to further specify the policy and criteria it will apply. Both these cases are included in a specific section of the current guide and the follow-up work is expected to start from 2016 and onwards, depending also on regulatory developments.

**8**                    **Did you assess the impact of the proposed changes?**

Analysis of the current national implementation and practices has shown that implementation of the proposed package should not result in material prudential and operational costs, and should be manageable for the banks. For a selected number of options and discretions, where the impact could be material, the ECB has conducted a quantitative impact assessment and designed appropriate transitional periods. This assessment is also presented in the Explanatory Memorandum which accompanies the two ECB documents. It is expected that the public consultation may bring further useful information on the impact of the policy package on individual banks.