EUROPEAN CENTRAL BANK

BANKING SUPERVISION

PUBLIC CONSULTATION

Draft Addendum to the ECB Guide on Options and Discretions available in Union Law

Template for comments

Institution/Company

FRENCH BANKING FEDERATION

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Telephone number

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Please make sure that each comment only deals with a single issue.

In each comment, please indicate:

- 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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Name of Institution/Company	FRENCH BANKING FEDERATION
Country	FRANCE

Comments

Draft Addendum	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	Chapter 1 Exclusion of intragroup exposures from the calculation of the leverage ratio	4	Clarification	For the sake of clarity, it seems useful to confirm that if an intra-group waiver has already been granted, it continues to be applicable going forward. In the Banking Union / SSM context, waiver conditions are in contradiction with the core principle of free flow of capital and liquidity. Clarification of the criteria required in order to obtain this exclusion: Criterion (1): to what extent the JST will be basing its assessment on the liquidity and funding risks in the context of the SREP?

				Criterion (2): what does the ECB mean by « forward looking assessment »? Criterion (3): could you please explain more specifically what JSTs will be required to evaluate (and how) in relation to the exemption relating to leverage ratio as an efficient complementary measure to the risk based capital requirements? Criterion (4): we understand that JSTs will have to evaluate the impact between article 429.7 as reformulated in the Leverage Delegated Act (and not CRR –as currently indicated in the draft addendum) and Recovery and Resolution plans. Could you please be more specific as to how those impacts will be evaluated regarding R&R plans?
☒	Chapter 1 Valuation of assets and off-balance sheet items - use of IFRS for prudential purposes	10	Amendment	We believe the flexibility afforded by the ECB should be maintained concerning the adoption of IFRS for the valuation of assets and off-balance items. - A transition period should be introduced to allow banks to comply with all the conditions (if maintained) and especially condition # 3 as well as condition # 4, which require among others the permanent application of IFRS to all entities, to all prudential reporting requirements. - Condition # 3 is contradictory with the ECB's voluntary-based approach. -This "apply to all or nothing" condition is also contradictory with proportionality principle. A legal entity within a group or subgroup may be forced to implement IFRS whereas it does not make much sense at its individual level (for economic reason for instance); the decision to implement IFRS at an entity level shall not be motivated by parent or sister - company situations.

				It is likely that conditions #1 and 3 will prevent banking groups from using IFRS because of minority of sub-group entities. The risk implied by these conditions lies in the fact that banking Groups may not use IFRS at all whereas IFRS promotes consistency between subsidiaries within a Member State and in different Member States by sweeping local accounting norms. - The notion of Group shall be clarified. In particular, with respect to conditions # 2 and 3, do they apply at the consolidated level of a Parent Institution in a Member State or at the consolidated level of the EU Parent Institution? If the latter applies, the conditions would be all the more difficult to meet, thus jeopardizing the potential benefit of this ECB's proposal.
☒	Chapter 1 Valuation of assets and off-balance sheet items - use of IFRS for prudential purposes	10	Amendment	It is inappropriate to expect the management body to approve a legal opinion; rather, a legal opinion has to be brought to the management body's attention / knowledge.
☒	Chapter 3 Calculation of risk-weighted exposure amounts	3	Amendment	For the sake of clarity, it seems useful to confirm that if an intra-group waiver has already been granted, it continues to be applicable going forward. In the Banking Union / SSM context, waiver conditions are in contradiction with the core principle of free flow of capital and liquidity. Amongst the documentation required in order to obtain such a waiver, we would like to point out that its seems unduly burdensome to require banks to provide a cover letter signed by a legal representative, a legal opinion approved by the management body and a statement signed by a legal

				representative also approved by the management body confirming overlapping concepts. It would be more practical if the ECB would provide 1 single common template. Furthermore, some of the requested documentation should be streamlined in order to avoid overlaps with other documentation embedded within other regulations. To be precise: - items (i), (ii), (iii) and (iv) under (6): requested information are already disclosed in the Risk Appetite Framework (RAF) Policy. Therefore, the text should replace those 4 points by a reference to the RAF Policy - item (v) under (7): such information should be covered by the bank recovery plan. Upon confirmation, the text should replace point (v) by a reference to the Recovery Plan.
☒	Chapter 3 Calculation of risk-weighted exposure amounts	3	Clarification	It is inappropriate to expect the management body to approve a legal opinion; rather, a legal opinion has to be brought to the management body's attention / knowledge
☒	Chapter 5 Cap on liquidity inflows	14	Clarification	It seems useful to confirm that the conditions determined by the ECB for granting the exemption under Article 33(2) may prevail only for future requests, and do not apply to files in the course of instruction, nor for granted exemptions.
☒	Chapter 5 Cap on liquidity inflows	14	Deletion	We do not share the rationale behind assimilating this exemption to a waiver, given that a bank will always be bound by the LCR requirement. On this basis, establishing a comparable process in order to request an exemption on the liquidity inflows cap does not seem appropriate.

We do not share the view expressed in the Addendum that the exercise of this option, in combination with the option in Article 34 would be similar to an Article 8 CRR waiver.
Indeed, under a waiver, the entity would only need to report its LCR and not ensure compliance with the 100% requirement in 2018.
In contrast, an entity benefiting from an exemption from the cap on intragroup inflows (based on Article 33(2) only would still have to comply with the 100% LCR requirement and would need, to this end, to obtain committed liquidity from its parent (either in a funded format if under Article 33(2) in isolation, or in an unfunded format if in combination with Article 34) for an amount consistent with its LCR outflows. This committed liquidity would symmetrically be accounted for as LCR outflows for the providing parent which would need to hold corresponding HQLA to comply with LCR. So while the Article 8 waiver enables to enforce liquidity requirements at sub-consolidated level only, Article 33(2) exemptions would still require adequate liquidity to be pre-positioned at both providing and receiving entity.
It should be reminded that CRR has introduced "superequivalence" (i.e. "goldplating") vs Basel LCR standards by requiring LCR compliance for all credit institutions at solo level.
The exemptions under Article 33(2) and Article 34 were introduced in CRR to allow specialised subsidiaries of European banking groups to comply with LCR while not imposing decentralised HQLA buffer management at entities which may not have adequate operational set up or skillset.
Accordingly, we consider it appropriate that CRR has set different, less stringent, specifications for the exemption under

				Article 33(2) than for Article 8 waivers and that ECB would only further 'goldplate' CRR requirements if it would apply similar requirements. Furthermore, the practical consequences of this proposed approach are unclear: - are institutions applying for an exemption under Article 33(2) required to provide the same documentation as for Article 8 waivers? - will the ECB grant joint Article 33(2) and Article 34 exemptions only in situations where the applicants would be ineligible to an Article 8 waivers for reasons beyond their control? We suggest the deletion of this provision.
☒	Chapter 5 Cap on liquidity inflows	14	Amendment	In the event the ECB wishes to maintain this provision, we believe applicable criteria should be amended and clarified as follows. Regarding the conditions for Article 33(2) exemptions listed on page 10 paragraph (2) when the exemption is not requested in combination with Article 34: - criterion (viii) should be amended as it basically requires the subsidiary receiving the funding to monitor the liquidity position of its parent company on a regular basis. As the counterparty (i.e. the parent) is itself subject to LCR compliance (as per criterion (vii)) and supervised by the ECB or a NCA, this should provide sufficient assurance that its liquidity position is adequate. - criterion (ix): it is unclear how the "granting [of] the exemption" may "impact the risk management systems" of the applicant institution. We would like the meaning of this requirement to be clarified.

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