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

Oesterreichsicher Sparkassenverband

Contact person

[redacted] ☒ [redacted] ☐

First name

[redacted]

Surname

[redacted]

E-mail address

[redacted]

Telephone number

[redacted]

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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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Template for comments

Name of Institution/Company	Oesterreichischer Sparkassenverband
Country	Austria

Comments

Draft Addendum	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	General		Choose one option	In general the Austrian Savings Banks welcome the approach by ECB to align the conditions and criteria for strengthening a transparent and effective approval process. In this context we highlight the importance to do so without setting new or additional regulation which are not based on or covered by level 1 regulation set by EU legislator; instead giving a detailed insight into ECB's decisions where necessary and requested by the legislator.

☒		4297	Clarification	While the explanatory notes of the consultation paper refers to the specific Recitals 91 and 92 of the Regulation (EU) 575/2013 (CRR) as well as those of the Delegated Regulation (EU) 2015/62, it fails to mention what is the most important consideration with respect to the topic at hand, the justification for Art 429 (7) CRR included in the explanatory memorandum to the Delegated Act on the leverage ratio. Commission states: While the changes proposed in this delegated act are generally aligned with the Basel revised standards on the LR, one of those changes addresses a 'Union specificity' that is not addressed by those standards. This specificity stems from the fact that, compared to the Basel framework, the CRR has a broader scope of application. The CRR applies to all banks (and investment firms) established in the Union, at both consolidated and individual level, while the Basel framework applies only to (large) internationally active banks, generally at consolidated level. This broad scope of application applies both for risk-based capital requirements and LR-related requirements under the CRR. However, unlike the risk-based capital requirements, the LR-related requirements do not currently foresee a specific treatment of intragroup exposures when institutions apply the CRR at individual level. In order to align the two, this delegated act therefore foresees, subject to approval from the competent authority and subject to certain conditions, the possibility to exclude intra group exposures when the LR rules are applied at individual level. The application of the LR at individual level to intragroup exposures, when risk-based capital requirements are not applied at this level, would not be

consistent with the role of the leverage ratio as a backstop to the risk-based capital requirements. This is particularly relevant for co-operative banking groups that have many smaller entities affiliated to a central body.

This statement clearly indicates the intention of the Commission (and – as a result – the delegated regulation) to align the specific treatment of intragroup exposures in the calculation of risk-weighted assets (i.e. the zero-risk weighting of specific exposures) with their treatment in the leverage ratio calculation (i.e. the exclusion of these same exposures from the exposure measure). As noted by the Commission, not excluding the intragroup exposures from the leverage ratio would make it impossible for the leverage ratio to act as a backstop; in fact, in all institutions with intragroup exposures of a non-negligible size, the leverage ratio would likely become the binding constraint if the exposures were not excluded from the calculation in parallel to the zero-weighting for the calculation of risk-based capital requirements.
Besides this issue is not only relevant for co-operative banking groups but also other types of banking groups operating centralised liquidity and funding management for a number of subsidiaries. It is especially important for all types of Institutional Protection Schemes, including those operating in the savings bank sector.

In our view, there should be no deviation in the exposures considered under either Art 113 (6) CRR or Art 429 (7) CRR, these should be identical. This also implies that the assessment

				of the exclusion under Art 429 (7) CRR should follow the assessment under Art 113 (6) CRR so as not to create inconsistencies of treatment; which is also clearly indicated by the CRR text of Art 429 (7) CRR itself as it refers only to the conditions set under Art 113 (6) CRR, without any indication of separate or additional conditions that need to be considered when applying Art 429 (7) CRR. As a result, there cannot be any additional assessment criteria for the authorisation under Art 429 (7) CRR compared to those used under Art 113 (6) CRR. Therefore, we believe that the criteria stipulated for the authorisation under Art 429 (7) CRR are not appropriate, as the ECB only provides further specification for the assessment of compliance with Art 113 (6) (c), (d) and (e) CRR in its consultation and does not propose to expand the list of assessment criteria under Art 113 (6) CRR.
☒		113(6)	Clarification	Here we want to refer to our general remark above. Any approval conditions shall be defined without setting new or additional regulations that are not based on or covered by level 1 regulations set by EU legislative power. Unfortunately we can identify several (draft) conditions that are going (far) beyond an in detail formulated approval process as it would be necessary and is most welcome too. I.e. when it comes to the conditions set under (iii) for Art 113 (6) (c) CRR (page 5) it is stated that “consistent” systems are used. It should be clearly defined what is meant by “consistent” as even within a group of institutions there are always those entities that

are following different and/or more specialized business activities. That implies that “consistent” in the meaning of a “one-size-fits-all” approach would be an inappropriate approval condition, especially when in parallel it focuses on business lines and portfolios. Therefore we would suggest to extent the guide by a list of indicators that needs to be considered when checking an institution’s internal systems and their appropriateness to fulfil the (approval) conditions.

As ECB we also see the need for an appropriate documentation when it comes to an approval process in the context of Art 113 (6) CRR. Nevertheless, the list of documents, starting at page 6, seems to be excessive and under certain conditions without any additional benefit, for example (viii). When there is a legal opinion stating that no obstacles to fund transfer or repayment of liabilities exist as formulated under (vii), what would be the additional output of a statement by the legal representatives stating the same content? As every statement in this manner can only reflect a current situation but is never able to look into the future, these potential obstacles would also be part of any supervisory survey after approving the application of Art 113 (6) CRR. The same situation with similar questions (just in the scope of all conditions set in the (draft) paper) would be created when Art 113 (6) CRR shall be applied for an initially approved but now extended group of institutions. The question should be raised where a full list of conditions can be applied more efficiently to result into an appropriate and meaningful output.
Therefore we urge ECB to find an appropriate balance between input (costs, efforts and other resources) and its potential

			outcome, which is always to be kept in mind when setting a supervisory action.
☒	24(2)	Clarification	We generally welcome the decision to accept International Accounting Standards when applying regulation Art 24 (2) CRR on a voluntary basis. From the (draft) conditions formulated with the paper we got the impression of a general requirement for an IFRS application as standard for every entity that is asking for an Art 24 (2) CRR application within a banking group. If that would not be the intended interpretation of the corresponding guide condition we would suggest making a clarification on this aspect. Otherwise we would highlight the point that it is given to every entity's decision to apply IFRS or n-GAAP. Especially within a group of financial entities it would usually be implemented in a top-down approach where a holding company starts with the implementation and would start the group-wide roll-out afterwards. Therefore we would suggest reconsidering the current approach and instead allowing a "mixed" application of IFRS and n-GAAP within a group as well. This would be also practically orientated as groups, especially from a certain number of entities or size, implement IFRS not overnight, but step by step, a process that can easily last over years.
☒	33(2) Delegated Act 2015/61	Clarification	Art 33 para 2 Del Reg (EU) 2015/61 (LCR) Again, we refer to our general remark above. Any approval conditions shall be defined without setting new or additional regulations that are not based on or covered by level 1 regulations set by EU legislative power.

		The (draft) conditions formulated by ECB are not just far reaching and going beyond the conditions that can be seen as covered by level 1 text, but in addition ECB seems to assume that every applicant intents to use several conditions of the CRR and/or Delegated Regulation 2015/61 in an improper way. We see the need for a careful consideration of certain applications but, again, Art 33 para 2 lit b) of LCR is already referring to the conditions set in Art 113 (6) & (7) of CRR. As already outlined under the conditions set for applying Art 429 (7) CRR above, there cannot be any additional assessment criteria for the authorisation under Art 33 para 2 lit b) of LCR compared to those used under Art 113 (6) CRR. Therefore, we highlight that the criteria stipulated for the authorisation under Art 33 para 2 lit b) of LCR are inappropriate and not in line with the legislative intension incorporated with the level 1 text. In general we also want to pinpoint our concerns about conditions set by an authority to apply a certain regulation intended to provide some ease under certain circumstances for regulated entities. It would be highly questionable if these conditions tend to foil the eligible regulation.
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