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

European Savings and Retail Banking Group (ESBG)

Contact person

[redacted] ☒ [redacted] ☐

First name

[redacted]

Surname

[redacted]

E-mail address

[redacted]

Telephone number

[redacted]

☒ 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 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.

PUBLIC CONSULTATION

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

Template for comments

Name of Institution/Company	European Savings and Retail Banking Group (ESBG)
Country	---

Comments

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

☒	Exclusion of intragroup exposures from the calculation of the Leverage Ratio	429	Amendment	While the explanatory notes of the consultation paper refer to the specific Recitals 91 and 92 of Regulation (EU) 575/2013 (CRR) as well as those of Delegated Regulation (EU) 2015/62, it does not 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 (LR). The 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 levels, 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.

In ESBG's opinion, 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 LR 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 (IPSs), including those operating in the savings bank sector.

In ESBG's 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, ESBG believes that there should not 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 paper and does not propose to expand the list of assessment criteria under Art 113(6) CRR.
☒	Calculation of risk-weighted exposure amounts - intragroup exposures	Art. 113(6) CRR	Clarification	First of all, we would like 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 the EU decision-makers. Unfortunately we could identify some (draft) conditions that seem to be going beyond a detailed approval process. The latter is indeed necessary and most welcome too.

	More precisely, when it comes to the conditions set under (iii) of 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 specialised business activities. This 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, ESBG would like to suggest to extend the guide by a list of indicators that need to be considered when checking an institution’s internal systems and their appropriateness to fulfil the (approval) conditions. ESBG agrees with the ECB that there is a need for appropriate documentation when it comes to an approval process in the context of Art 113(6) CRR. Nevertheless, the list of documents, starting on 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? Every statement in this manner can only reflect the 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 is applied for an initially approved but now extended group of institutions.

				More research should be carried out to see where a full list of conditions can be applied more efficiently to result in an appropriate and meaningful output. Therefore, ESBG would like to invite the ECB to find an appropriate balance between input (costs, efforts and other resources) and its potential outcome, which always needs to be kept in mind when setting out supervisory action.
☒	Valuation of assets and off-balance sheet items - use of IFRS for prudential purposes	Art. 24(2) CRR	Clarification	Generally speaking, ESBG welcomes the decision to accept International Accounting Standards when applying Art 24(2) CRR on a voluntary basis. From the (draft) conditions formulated in the paper, however, we get the impression that it will be necessary to have 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 is not the intended interpretation of the corresponding guide condition, ESBG would suggest making a clarification with regard to this aspect. Otherwise, we would like to highlight the point that it is up to every entity to apply either 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 also be practically orientated, as groups, especially from a certain

				number of entities or size, implement IFRS not overnight, but step by step, which is a process that can easily last some years.
☒	Cap on inflows	33/2 Delegated Act 2015/61	Clarification	Once again we would, first of all, like to refer to our general remark at the very beginning. 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 decision makers. The (draft) conditions formulated by the ECB do not just seem relatively far reaching and maybe even going beyond the conditions that can be seen as covered by level 1 text, but in addition the ECB seems to assume that every applicant intends to use several conditions of the CRR and/or Delegated Regulation 2015/61 in an inappropriate way. We see the need for careful consideration of certain applications but, again, Art 33(2)(b) Delegated Regulation is already referring to the conditions set out in Art 113(6) and (7) CRR. As already outlined under the conditions set for applying Art 429(7) CRR above, there should not be any additional assessment criteria for the authorisation under Art 33(2)(b) Delegated Regulation compared to those used under Art 113(6) CRR. Therefore, ESBG would like to point out that the criteria stipulated for the authorisation under Art 33(2)(b) Delegated Regulation don’t seem appropriate, according to our conclusions, and are not fully in line with the legislative intention incorporated in the level 1 text. In general, we would furthermore like to state 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. It should be possible to obtain an exemption irrespective of whether or not the threshold is reached (see penultimate paragraph on page 10). This might be the only way that banks that are close to the threshold will have a certain degree of planning certainty. On top of that, it should be possible to judge whether or not the criteria are met regardless of a bank's current inflow/outflow ratio.
☒	Chapter 1 – Consolidated supervision and waivers of prudential requirements 3. Capital waivers	Art. 7(1) CRR	Deletion	The sentence "In particular, the ECB will consider the factors set out under paragraph 4 of this Chapter" should be dropped from subparagraphs 1 and 2 of Chapter 3.1, in ESBG's point of view. Liquidity waiver requirements under Art 8 of the CRR are, in our opinion, irrelevant to the requirements governing waivers under Art 7 of the CRR. As a matter of fact, the CRR's leverage and liquidity requirements pursue different objectives.
☒	Liquidity Chapter 5.4: Additional collateral outflows from downgrade triggers	Art. 30(2) Delegated Regulation (EU) 2015/61	Clarification	ESBG considers a materiality threshold of 1% of an institution's total outflows to be too low to identify a material outflow for the purpose of the LCR calculation. Furthermore, we would like to suggest introducing a harmonised methodology to detect material outflows in the context of the LCR rules. We hope to correctly assume that "outflows" means total payment outflows pursuant to template C76.00, row 300, i.e. not net payment outflows. In order to achieve a harmonised

				methodology for identifying material outflows in the LCR system, we would suggest raising the materiality threshold from 1% to 10% of net payment outflows, as when determining material outflows in connection with additional outflows for collateral needs relating to derivatives transactions (Art 423(3) CRR and the final draft of the EBA's RTS 2014/05). This would help avoid the disproportionate burden on small banks, which a lower threshold would generate and would at the same time harmonise the definition within the context of the LCR. In ESBG's opinion, the ECB's proposal does not fully take account of the so-called floor rating, which constitutes a minimum rating for some of our members. These banks do not normally have an individual external rating.
☐	Chapter 9.3 Governance arrangements and prudential supervision	9.3	Deletion	Chapter 9.3 of the existing guide on ONDs, published in March 2016, requires significant institutions to have separate risk and audit committees. The guide defines the term "significant institution" for the purpose of applying Art 76(3) CRD IV. The ECB takes the view that, "if the assets of the credit institution (…) are equal to, or exceed, EUR 5 billion", this is sufficient to classify it as significant. According to ESBG's point of view, this criterion could be deleted. Total assets are not necessarily an appropriate criterion, especially with a threshold set at only EUR 5 bn, which would excessively increase the number of affected banks without any objective and clear justification. The value of a bank's transactions does not say much about the level of associated

		risk. It should be possible instead to decide on a case-by-case basis whether or not to permit a combined risk and audit committee, depending on the type, size and complexity of a bank's business (principle of proportionality). If the ECB nevertheless decides to retain the focus on total assets, it will be essential to set the threshold at a significantly higher level. In the context of the SSM, for example, European lawmakers consider consolidated total assets of 30 billion euros an appropriate criterion for identifying significant institutions. We are unfortunately not able to identify a discernible reason why a different threshold should be set for the purpose of applying Art 76 CRD IV.
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	
☐	Choose one option	

☐	Choose one option
☐	Choose one option
☐	Choose one option