EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Feedback statement

Responses to the public consultation on revisions to the ECB's options and discretions policies

July 2025

Contents

This document provides an overview of the comments received during the public consultation on draft revisions to the ECB's options and discretions policies. Furthermore, it provides an assessment of those comments and explains the amendments made to the relevant policy instruments as a result of the public consultation.

1 Introduction and overview of responses

1.1 Context

On 8 November 2024 the European Central Bank (ECB) launched a public consultation on updates to its harmonised policies on the options and discretions (O&D) that it is allowed to exercise under European Union law when supervising banks. The public consultation ended on 24 January 2025.

The updates to the ECB's O&D policies were set out in four draft policy instruments:

1. a draft revised version of the ECB Guide on options and discretions available in Union law (the "draft revised Guide");
2. a draft ECB Regulation amending Regulation (EU) 2016/445[1] on the exercise of options and discretions available in Union law (the "amending Regulation");
3. a draft Recommendation amending Recommendation ECB/2017/10[2] on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (the "amending Recommendation");
4. a draft Guideline amending Guideline (EU) 2017/697[3] of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (the "amending Guideline").

The consultation was conducted to collect comments from relevant parties and to foster transparency. The ECB has given due consideration to all the comments received during the consultation period.

1.2 Response overview

This feedback statement presents summaries of the comments received during the public consultation together with the ECB's feedback in relation to those comments. In total, 210 comments were received from 15 different stakeholders. The respondents included 13 banking associations and two banks. The ECB received comments on three of the revised policy instruments (the revised Guide, the amending Regulation and the amending Recommendation). In the following section,

1 Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

2 Recommendation of the European Central Bank of 4 April 2017 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/10) (OJ C 120, 13.4.2017, p. 2).

3 Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9) (OJ L 101, 13.4.2017, p. 156).

the ECB has grouped together comments concerning similar or identical issues. Feedback is thus provided on specific issues raised by the consultation respondents.

As a result of the comments and the ECB's assessment of them, the ECB has made a small number of amendments to the revised O&D policies.

The ECB reiterates that the O&D Guide does not establish regulatory requirements and the specifications and principles included in it should not be construed as being legally binding rules. If, in specific cases, there are factors that justify departing from this guidance, the ECB may consider different criteria than those established in the Guide, provided that clear and sufficient reasons are provided for doing so.

1.3 Structure of this feedback statement

Section 2 provides a summary of the comments received on each of the three policy instruments on which the ECB received comments, together with the ECB's response to those comments. For each comment, it is specified whether an amendment to the relevant policy instrument has been made. The tables in Sections 2.1 to 2.3 cover the feedback on the three policy instruments on which comments were submitted.

2 Consultation responses and ECB feedback

2.1 Comments on the revised Guide

Comments on Section II, Chapter 1

Consolidated supervision and waivers of prudential requirements

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 5: Liquidity waivers (Article 8 of the CRR)	Spanish Association of Savings and Retail Banks	The respondent suggested that the ECB revise its expectation that it should be the credit institution's CEO to sign the cover letter submitted in support of an application for a liquidity waiver. The respondent suggested that the ECB should accept the signature of another figure with an appropriate level of competency, in order to achieve greater operative agility.	The ECB is of the view that applying for a liquidity waiver is a strategical decision, and that therefore a sufficient level of seniority is required when making such an application. Therefore, the ECB has decided to maintain its current expectation. The ECB reiterates that the O&D Guide does not establish regulatory requirements and the ECB may consider different criteria than those established in the Guide, provided that clear and sufficient reasons are provided for doing so.	No amendment
Paragraph 15: **Valuation of assets and off-balance sheet items – use of International Financial Reporting Standards (IFRS) for prudential purposes** **(Article 24(2) of the CRR)**	• Austrian Federal Economic Chamber • European Association of Cooperative Banks • German Banking Industry Committee • European Banking Federation • AFME/ISDA	One respondent expressed appreciation of the fact that the ECB plans to maintain its current approach of not exercising the option in Article 24(2) in a general manner. Respondents suggested that the ECB delete the newly introduced sentence that "the ECB may consider exercising the option set out in Article 24(2) on a case-by-case basis, if duly justified from a supervisory perspective". The respondents argued that convergence to the use of IFRS for prudential purposes may be associated with high administrative and IT costs, especially in the case of smaller institutions and institutions with global presence, which could be required to adhere to up to three different accounting standards at a time.	As set out in the explanatory memorandum accompanying the public consultation, any case-by-case exercise of the option in Article 24(2) of the CRR would depend on the evolution of European reporting integration initiatives and would likely be aimed at harmonising the application of accounting standards for prudential purposes within supervised banking groups (for example, it could become necessary for entities that apply national Generally Accepted Accounting Principles (nGAAP) for prudential purposes at solo level, while applying International Financial Reporting Standards (IFRS) for prudential purposes at consolidated group level). Against this background, it is unlikely that smaller stand-alone institutions would be affected by the exercise of the option. The ECB remains open to investigating alternative solutions to achieve such harmonisation and intends to continue liaising with potentially affected institutions.	No amendment

Comments on Section II, Chapter 2

Own funds

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 5: **Deduction of insurance holdings** **(Article 49(1) of the CRR)**	• Spanish Association of Savings and Retail Banks • European Association of Cooperative Banks • Pan-European Conglomerate Club • French Banking Federation • European Banking Federation • AFME/ISDA	The respondents questioned the ECB's reading of Article 49(1) of the CRR. It was argued that both a literal and a contextual interpretation of the legislation support the reading that Article 49(1) of the CRR can only be applied to CET1-equivalent instruments issued by insurance subsidiaries and not to other own funds-equivalent instruments. Moreover, some of the respondents argued that even if Article 49(1) of the CRR is read as extending to own funds instruments other than CET1-equivalent instruments, the ECB cannot require an institution to apply Article 49(1) to all own funds instruments, since Article 49(1) provides only that institutions can seek permission from the competent authority not to deduct own funds instruments and – as a consequence – an institution would be at liberty to request permission covering some own funds instruments but not others. Some respondents also argued that the ECB should not alter the approach that institutions have applied so far, because this would override a long-established application of Level 1 regulation and would undermine the way in which impacted institutions have long been structuring issuances and capital management practices. Those respondents also believe that requesting institutions to change approach would be contrary to Article 49(1), second sub-paragraph, of the CRR.	In its Guide on options and discretions available in Union law of November 2016, the ECB expressed the intention to continue recognising authorisations for non-deduction that had been granted by the national competent authority prior to 4 November 2014. In its day-to-day supervision, the ECB became aware of diverging practices related to Article 49(1) of the CRR in different Member States. About half of the existing permissions granted to significant institutions making use of Article 49(1) of the CRR had allowed non-deduction for all own funds instruments, while the other half had allowed it for CET1 instruments only. In the absence of prudential reasons relating to the individual circumstances of the credit institutions, these differences in treatment ran counter to the principle of equal treatment in the ECB's fulfilment of its prudential tasks. It has also been noted that all permissions that the ECB granted pursuant to Article 49(1) of the CRR cover the non-deduction of all own funds instruments. Given the inconsistent application across European banking supervision, in April 2021 the ECB submitted a question to the European Banking Authority (numbered 2021_5085), asking for clarity on the application of Article 49(1) of the CRR. In July 2024 the European Commission decided to reject the question because "the issue it deals with is already explained or addressed in Article 49 of Regulation (EU) No 575/2013".	No amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
			The approach followed by the ECB is supported by the wording of Article 49(1) of the CRR, which refers to own funds instruments and not only CET1 instruments, and which is consistent with the approach taken for Article 49(2) and (3) of the CRR, which the ECB accepts is applicable to all own funds instruments. The ECB sees no prudential rationale for allowing the non-deduction of CET1 instruments, but not of AT1 instruments or T2 instruments. In the default prudential treatment of exposures, they are assigned a risk weight according to their risk classification. The prudential framework requires a deduction from own funds, instead of risk weighting, for certain types of exposures. This is, for instance, the case for holdings of own funds instruments in financial sector entities (see Articles 36, 56 and 66 of the CRR). This prudential capital deduction aims to address the risk of double gearing of capital. In turn, Article 49(1) of the CRR sets out a derogation from this deduction principle: it allows the non-deduction of holdings in the insurance sector. This non-deduction is conditional on there being a higher level of supervision (at the level of the financial conglomerate) because, at least in theory, at that level the double gearing should be mitigated by the consolidation process (under method 1 of the Financial Conglomerate Directive (FICOD)) or the deduction and aggregation (under method 2 of the FICOD). If a competent authority allows a derogation for CET1 instruments in the insurance sector, the ECB sees no justification for not applying the non-deduction to AT1 instruments or T2 instruments. In other words, one cannot allow double gearing at the banking group level for CET1 instruments, while arguing that it needs to be prevented for AT1 instruments and T2 instruments, which are less risky. Lastly, the ECB notes that the Commission's proposal for CRR 1, dated 20 July 2011, referred explicitly to a non-deduction of CET1 instruments only (see Article 46(1) thereof). However, the final text of Article 49(1) of the CRR instead refers to a non-deduction of own funds instruments. This serves as a further indication that the EU legislators have explicitly stepped away from the Commission's initial proposal to limit Article 49(1) of the CRR to CET1 instruments only. The ECB will grant a transition period of one year from the date of the revised decision.	

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 8: **Reduction of own funds: Excess capital margin requirement** **(Article 78(1), point (b) of the CRR)**	• German Banking Industry Committee • European Banking Federation • AFME/ISDA	The three respondents asked that the requirements related to the documents to be provided as part of an application for an own funds reduction be applied in a proportionate manner. In the case of small reductions (for example, when the effect on capital ratios is lower than 10 basis points), the respondents are of the view that lower or graduated documentation should be required. In cases with very low materiality, the respondents suggested that it should be possible for the ECB to make a decision solely on the basis of the information already available to it. One respondent found the amendment made to point (v) of paragraph 8 unclear. That respondent also noted that paragraph 8 is silent on the forward-looking information to be provided for an own funds reduction with replacement under Article 78(1), point (a) of the CRR. The respondent argued that the information already available to the joint supervisory team as part of continuous supervision should be sufficient and that therefore no additional documentation should have to be produced for an own funds reduction with replacement.	The ECB takes note of the points raised. However, documentation requirements for own funds reductions are not addressed in this Guide. This amendment specifies that one of the factors assessed in the context of an own funds reduction without replacement is the quality of the forward-looking information and the evaluation of risks, which is to be provided in accordance with Delegated Regulation (EU) No 241/2014. With reference to an own funds reduction with replacement, the matter is not dealt with in the Guide, as the ECB considers Article 27 of Delegated Regulation (EU) No 241/2014 to be exhaustive.	No amendment
Paragraph 9: **Reduction of own funds: general prior permission** **(Article 78(1), second sub-paragraph, of the CRR)**	• German Banking Industry Committee • European Banking Federation • AFME/ISDA	The respondents argued that this paragraph would negate the simplified documentation requirements in Delegated Regulation (EU) No 241/2014 for renewal of a general prior permission.	This paragraph does not cover the documentation and information that institutions need to submit pursuant to Articles 30, 30a, and 30b of Delegated Regulation (EU) No 241/2014. The legislative texts do not prescribe an option or discretion that the competent authority may exercise in that domain. Rather, this paragraph covers the ECB's approach in relation to the margin that is specified in the second sub-paragraph of Article 78(1) of the CRR. For renewals of general prior permission, the ECB confirms that it does not intend to request the information that is listed under points (a) to (d), (f), (g) and (i) of Article 30(1) of the EBA Regulatory Technical Standards (RTS), since this would be in contradiction with Article 30b(2) of the RTS. The ECB will amend the title of this paragraph and that of the previous paragraph to make it clear that they solely cover the ECB's discretion as regards the "excess capital margin requirement".	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 15: **Minority interests included in consolidated Common Equity Tier 1 capital in the case of third-country consolidated requirements** **(Article 84(1), point (a)(ii), Article 85(1), point (a)(ii), and Article 87(1), point (a)(ii), of the CRR)**	• Banco Santander • Spanish Banking Association • European Banking Federation • AFME/ISDA	The respondents argued that the CRR does not prescribe any option or discretion to the competent authority as regards the calculation of the capital requirements that are used for determining how much minority interest can be included in consolidated own funds. Furthermore, it was argued that the CRR specifies unambiguously that, for third-country subsidiaries, the comparison mechanism is entirely based on the local supervisory framework without reference to CRR-specific capital requirements and without leaving this issue to the discretion of the supervisor.	The ECB acknowledges that the Guide mainly deals with options and discretions and has therefore decided to remove this paragraph from the Guide. Credit institutions are solely responsible for complying with directly applicable provisions of the CRR. That said, and without prejudice to any future clarifications from the EBA or the Commission, in the ECB's view, the changes made to Article 84(1)(a)(i) and (ii) "*…or any local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital*", like those made to Articles 85 and 87, are meant to capture the situation in which an EU parent credit institution has multiple layers of subsidiaries in third countries, and at each of those layers there are minority interests. Therefore, the relevant directly applicable provisions of the CRR should, in the ECB's view, be applied as follows: 1. When the undertaking calculating the eligible minority interests arising from subsidiaries established in third countries is an undertaking established in the European Union, the third country consolidated requirements should be considered under point (i) of Article 84(1)(a) of the CRR, while the EU consolidated requirements should be considered under point (ii) of Article 84(1)(a) of the CRR. 2. When, for the purposes of point 1, it is necessary to calculate eligible minority interests arising from lower level subsidiaries established in third countries (which are subsidiaries of intermediate entities established in the third country), the third country requirements applicable to the lower level subsidiaries at individual level (or at the relevant sub-consolidated level of the lower level subsidiary) should be considered under point (i) of Article 84(1)(a) of the CRR, while the third country consolidated requirements applicable to the intermediate subsidiary undertaking that relate to the lower level subsidiary should be considered under point (ii) of Article 84(1)(a) of the CRR. This calculation is relevant to determine the CET1 consolidated capital of the intermediate-level third-country subsidiary, which is taken into account when calculating the minority interest at the level of the EU credit institution. The joint supervisory teams (JSTs) will closely monitor the application of this CRR provision and may propose appropriate supervisory actions.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 16: **Derogation from the "lower of the two requirements" criterion when calculating minority interests and qualifying Tier 1 and Tier 2 capital** **(Article 84(1), point (a), Article 85(1), point (a), and Article 87(1), point (a), of the CRR)**	• Banco Santander • European Association of Cooperative Banks • German Banking Industry Committee • French Banking Federation • European Banking Federation • AFME/ISDA • Italian Banking Association • Deutsche Bank • Spanish Banking Association	Nine respondents commented that the proposed O&D does not correspond to the intention of the EU legislator, with some of them suggesting that the ECB's conditions for this O&D should be limited to proof that minority shareholders are actually bearing losses incurred at subsidiary level on a pro-rata basis and that those losses are therefore also borne by third parties on a consolidated basis and are not additionally burdening own funds at group level. Against this background, the nine respondents believe that the ECB's conditions are disproportionate and almost impossible to meet in practice. Four respondents mentioned that the proposed loss transfer mechanism of the ECB may risk rendering the own funds instruments of the subsidiary ineligible. The same four respondents argued that the ECB should instead differentiate between two scenarios: 1. The group requirement related to the subsidiary exceeds the stand-alone requirement of the subsidiary. 2. The stand-alone requirement of the subsidiary exceeds the group requirement related to the subsidiary. The respondents noted that for category (1) the conditions must be such that the institution must demonstrate that there is sufficient capital in the subsidiary to cover the higher group requirements, whilst in category (2) it must demonstrate that the additional amount of minority interest to be recognised at group level is available to cover losses outside of the subsidiary.	With CRR III, the EU legislator allows banks to depart from the "lower of the two" rule if they have "demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level". The pre-condition is thus a demonstration that losses occurring at consolidated level can be absorbed, at least pro quota, by the additional amount of minority interests to be recognised. In this regard, the ECB emphasises that it is not adding any conditions to the CRR text. It is simply listing the factors that it will assess in order to determine whether the additional amount of minority interest is available to absorb losses at consolidated level, as required by the CRR. This notwithstanding, several amendments have been made to reflect the respondents' comments. The ECB agrees with the industry's feedback that the CRR does not require the (additional amount of) minority interest to cover losses that occur at all other undertakings of the group. The text relating to this O&D has been amended accordingly. Furthermore, the ECB acknowledges that there might be instances when the amount under point (ii) of Article 84(1)(a) of the CRR is higher than the amount under point (i) of Article 84(1)(a) of the CRR where the capital located in the subsidiary up to the amount under point (ii) may contribute to cover the risks identified at consolidated level and fulfil the CRR condition, including in the absence of a transfer of resources to the parent. This may happen when the risk profile of the subsidiary is similar to the risk profile of the group. Lastly, the ECB recognises that the situation of CET1 capital is different from that of T1 capital and total capital (own funds). The text has been amended accordingly.	Amendment

Comments on Section II, Chapter 3

Capital requirements

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 3: **Trading book classification exemption** **(Article 104(4) of the CRR)**	• European Banking Federation • AFME/ISDA • Austrian Federal Economic Chamber	Several respondents raised questions on the application process, the treatment of specific instruments and the interpretation of the CRR.	These questions go beyond the legal scope of the Guide. Nevertheless, the comments have been noted for the further development of the supervisory framework and processes.	No Amendment
		Respondents asked the ECB to clarify that when an institution is assigning a position in an instrument to the non-trading book following ECB approval under Article 104(4) of the CRR, this shall not be considered a reclassification as set out in Article 104a of the CRR.	The ECB confirms that the assignment of a position in an instrument referred to in Article 104(2) points (d) to (i) of the CRR to the non-trading book following ECB approval under Article 104(4) of the CRR is not considered a reclassification as specified in Article 104a of the CRR.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
	• European Association of Cooperative Banks • Deutsche Bank • French Banking Federation • Italian Banking Association	Respondents asked for a general grandfathering from the new boundary rules for positions entered into before the application of Article 104 of the CRR as amended by CRR III. More specifically, institutions asked for these positions to continue under their current classification without the need for ECB approval and expect Article 104 of the CRR as amended by CRR III to apply only to new positions entered into after the application of Article 104 of the CRR as amended by CRR III.	The ECB is of the view that a general grandfathering for positions entered into before the application of Article 104 ("current positions'') as amended by CRR III[4] would not be consistent with the CRR. In the ECB's view, if the current allocation in the non-trading book (or in the trading book) of a position in an instrument does not comply with Article 104(2) (or Article 104(3)) of the CRR and if such a position may be subject to derogation under Article 104(4) (or Article 104(5)) of the CRR, the institution should ask for supervisory approval. At the same time, the ECB recognises that the current classification of several positions may be not compliant with Article 104(2) (and Article 104(3)) of the CRR. The ECB intends to develop a practical internal framework to efficiently assess applications for supervisory approval. Until this process is fully in place, the ECB intends to grant additional flexibility for positions which need approval in accordance with Article 104(4) or Article 104(5).	No Amendment
		Respondents asked for clarification as to whether the Guide is restricted to external transactions.	The Guide is not restricted to external transactions. Internal hedges also fall within its scope.	Amendment
		Respondents raised concerns about the granularity of the documentation to be provided and the potentially heavy burden of retrieving relevant data from internal bank systems. Additionally, general concerns were raised about the complexity of the expected application process and how to handle/document relevant positions until the derogations are granted by the supervisors.	The documentation package has been streamlined. Process efficiency will be considered when setting up the internal supervisory process (see above).	Amendment
		Respondents asked the ECB to clarify which types of instruments are covered by Article 104(2)(d) of the CRR and which are not. The respondents claimed that instruments intended for hedging exposures, without trading intent and initiated outside of the trading desk, should naturally be classified under the banking book.	In the draft revised Guide, the ECB intended to set out how the derogation specified in Article 104(4) of the CRR is applied, but not which instruments would fall within the scope of Article 104(2)(d) of the CRR. The Guide cannot enlarge the scope of transactions subject to supervisory pre-approval beyond the scope defined in the Level 1 text.	No amendment
		Respondents asked whether listed equities that are participations (under the applicable accounting standard) are generally considered to be classified as trading book positions.	The comment relates to the interpretation of Level 1 legislation, for which credit institutions are solely responsible. Since the Guide mainly relates to the exercise of options and discretions by the ECB, it does not address this issue.	No amendment
		Respondents asked for an exact quotation of Article 104(4) of the CRR.	Wording has been adapted to be aligned with the CRR.	Amendment
		Respondents claimed that points iii) and v) of Chapter 3, paragraph 3 are redundant, as both address the demonstration of the absence of trading intent for the purposes of the trading book classification exemption under Article 104(4) of the CRR.	The draft revised Guide specified that when assessing a bank's request, the ECB will consider how the institution ensures that the positions included in the request are neither held with trading intent nor used for hedging purposes in the trading book (as per point iii), and whether the absence of trading intent is clearly reflected in the institution's policies and procedures, in accordance with Article 104(1) of the CRR (as per point v).	Amendment

[4] It should be noted that the enforcement of Article 104 is currently not prioritised by competent authorities following the EBA no action letter. For this reason, it is as if the provisions in Article 104 as amended by CRR III are not applicable yet.

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
			The ECB agrees that there might be some redundancy in listing two separate requirements. Therefore, the Guide has been amended to clarify that, according to point iii), the ECB will consider how the institution ensures that the positions included in the request are neither held with trading intent nor used to hedge positions held with trading intent, and whether this is clearly expressed in the policies and procedures of the institution pursuant to Article 104(1) of the CRR. As a result, point v) has been deleted.	
		Respondents asked for the documentation requirement to be simplified in the event that, for hedging derivative instruments, the hedged instrument expires or is sold, terminated or exercised and is not replaced or rolled into another hedged instrument. Additionally, respondents deemed that the granularity of information requested is particularly challenging in the case of macro-hedges.	The ECB agrees that the documentation confirming that the hedging derivative instrument has been discontinued refers to cases which may only follow (in time) ECB approval. The documentation requirement has been modified and now only refers to policies and procedures for these cases.	Amendment
		Respondents were concerned about the use of the term "hedge effectiveness" in the Guide and want to avoid it being understood in an overly narrow IFRS context. Respondents claimed that demonstrating "hedge effectiveness" should be permissible based on different concepts.	The ECB intended to use the term "hedge effectiveness" in a general manner and not specific to an accounting standard (IFRS). The ECB has clarified and streamlined the documentation request and replaced the term "hedge effectiveness" with "relationship between the hedge and the hedged position and the effectiveness of the hedge".	Amendment
		Respondents claimed that there is redundancy in points vii) and x) of Chapter 3, paragraph 3, arguing that the lack of trading intent justifies the banking book assignment for both points.	The draft revised Guide specified that the ECB expects the credit institution submitting the application to provide, among other things, documents covering: the motivation for including the position in the non-trading book and arguments for this treatment compared with other positions in the same/similar instruments held in the trading book (as per point vii); and evidence that the position is not held with trading intent and does not hedge positions held with trading intent (as per point x). The ECB agrees that listing two separate requirements might be redundant. Therefore, it has amended the Guide by deleting point vii) and requiring evidence or facts ensuring that the position is not held with trading intent and does not hedge positions held with trading intent.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		Respondents raised the concern that inclusion of own liabilities in the non-trading book, even in the case of instruments classified as held for trading or allocated to the trading portfolio under the relevant accounting framework, would lead to inconsistency in accounting and regulatory treatment. The own liability would be recognised at market value for accounting purposes, which would conflict with the non-trading book designation of such liabilities required for regulatory purposes. A separation of the liability from the underlying derivative would require considerable time and effort. In addition, respondents raised the general concern that where there is a potential overlap between 104(3) and 104(2) points (d) to (i) of the CRR the ECB should grant banks some flexibility in specific cases if needed. Furthermore, existing own liabilities would have to be reclassified for regulatory purposes, whereas accounting frameworks do not provide for the reclassification of liabilities. The priority order creates uncertainty, as it remains unclear how “trading purpose” is to be interpreted. The regulatory treatment of the boundary should reflect differences across banks and accounting regimes and allow for a synchronised treatment of instruments in each bank. Respondents also gave the example of derivatives on baskets of assets or collective investment undertakings (CIUs) invested in unlisted equities, resulting in the whole instrument being classified as a non-trading book position under the priority order.	In the ECB’s understanding, a priority order would be generally useful but, based on the current supervisory experience, it cannot be ensured that it would be the best option for all cases. Therefore, the ECB deems it more appropriate not to include a priority order. Nevertheless, the ECB is of the view that treatment of own liabilities is sufficiently clearly specified in the CRR. Article 104(2)(d) of the CRR is not sufficient to justify a trading book assignment; this would only be possible according to Article 104(3)(h) of the CRR when the “instruments meet the criteria referred to in paragraph 2, point (e), or the criteria referred to in paragraph 2, third sub-paragraph”. As assignment to the non-trading book is mandatory, no application in accordance with Article 104(4) of the CRR is expected. The same holds true for derivatives on CIUs invested in unlisted equities, which have to be assigned to the non-trading book. The ECB is considering transitional arrangements to address significant issues that will emerge when the EBA opinions EBA/Op/2023/02 and 2024/1623 cease to apply.	Amendment
		Respondents raised the issue that banks that have no trading book assign structured issues in own liabilities to the non-trading book without splitting the embedded option with back-to-back hedges also included in the non-trading book. There would be neither trading intent nor residual market risk exposure, and creating a trading book to host the structured issues and the back-to back hedges would generate an unnecessary burden. Respondents suggest removing the sentence “the ECB considers this to be especially relevant for the requirements in Article 104(2), point (i), of the CRR, including the splitting of instruments” or adding a condition such as “unless the institution could prove the absence of trading intent” at the end of the paragraph.	Article 104(2) of the CRR details which instruments must be allocated to the trading book. This Article also applies to positions which are back-to-back hedged. Article 104(4) of the CRR details which derogations from paragraph 2 are allowed. In a request for approval to derogate from Article 104(2)(i) of the CRR, a bank might point to the fact that it does not have a trading book so far. The ECB is of the view that deficiencies in the operationalisation of the requirements of Article 104 of the CRR are not a valid reason for a derogation under Article 104(4) of the CRR and has therefore kept this part of the Guide unchanged.	No amendment
		Respondents suggested that the Guide should clarify whether listed equities classified as participations under the applicable accounting standard are generally considered trading book positions. If so, the Guide should also specify that listed equities eligible for the deduction exemption under Article 49(2) or (3) of the CRR, or those covered by the grandfathering provision under Article 495a(3) of the CRR, typically do not require ECB approval to be included in the banking book.	Approval for exempting any listed equities under Article 104(4) of the CRR from the trading book depends on the individual assessment outlined in the Guide, and no automatic exemptions are acknowledged as described.	No amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		Respondents suggested including a reference to the Basel Framework RBC25.9, footnote 3 with the following wording: “Subject to supervisory review, certain listed equities may be excluded from the market risk framework. Examples of equities that may be excluded include, but are not limited to, equity positions arising from deferred compensation plans, convertible debt securities, loan products with interest paid in the form of “equity kickers”, equities taken as a debt previously contracted, bank-owned life insurance products, and legislated programmes. The set of listed equities that the bank wishes to exclude from the market risk framework should be made available to, and discussed with, the national supervisor and should be managed by a desk that is separate from desks for proprietary or short-term buy/sell instruments.”	Such a reference is not included in Article 104 of CRR III. Approval for exempting any listed equities under Article 104(4) of the CRR from the trading book depends on the individual assessment outlined in the Guide.	No amendment
		Respondents raised concerns about the requirement that any positions for which a bank seeks a classification exemption under Article 104(4) of the CRR must be managed by a unit separate from those handling trading book positions. They argued that this stipulation is disproportionate and inflexible, especially since clear strategies and policies for managing these positions should suffice. They suggested that the requirement should be either deleted or amended, as it imposes an unnecessary organisational burden on banks and lacks a strong foundation in the primary regulation. Respondents further noted that the requirement for separate management units seems to be related to Article 104b(1) of the CRR, which pertains to institutions using the internal model approach for calculating market risk capital requirements. Therefore, they argued that this requirement should only apply to institutions using this approach, and proposed clarifying subsection (vii) to specify that it applies “if the institution applies Article 325(1)(b)”. Respondents suggested that if the separation condition is intended to mitigate potential conflicts of interest between managing trading and non-trading books, it should be rephrased to focus on how the institution handles such conflicts. They also pointed out that if a credit institution does not have a trading book but seeks approval to assign certain positions to a non-trading book, it wouldn't have a unit responsible for trading book management. They therefore argued that the supervisory expectation regarding separate units is not supported by applicable legislation.	The ECB would like to clarify that the goal of this requirement is to ensure that positions in instruments exempted from classification in the trading or banking book are managed by separate business units after trades are executed, especially for the purpose of calculating risk-weighted assets (RWA). It is emphasised that when the team responsible for managing banking book positions (such as the treasury) accesses the market through a trading desk, this arrangement is compatible with banking book classification, provided the trading desk acts solely as an agent for the treasury and not as a principal. Acting as an agent implies that the trading desk does not partake in any risks or rewards related to the financial instruments bought or sold by the treasury, although it can charge a commission for executing the orders. The management information system must maintain the integrity and traceability of all transactions carried out by trading desks on behalf of the business unit(s) managing the banking book. To clarify this point, the wording has been revised, and the following footnote added: “This does not preclude the case that a trading unit executes, as mere agent, transactions managed by banking book units.”	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 4: **Non-trading book classification exemption** **(Article 104(5) of the CRR)**	• European Association of Cooperative Banks • French Banking Federation • AFME/ISDA • German Banking Industry Committee • Deutsche Bank	Respondents argued that submitting a separate request for each hedge fund is not aligned with the time-to-market of the activity and would also be quite burdensome to implement from an operational perspective. They argued that the conditions for classifying exposures to hedge funds should align with those applied to collective investment undertakings (CIUs) under Article 104(8) of the CRR. The respondents also referred to the US draft rule text (Federal Reserve and FDIC Notice for Proposed Rulemaking on Basel III endgame, 27 July 2023) in that regard and the possibility of an uneven playing field.	The provisions of Article 104(5) of the CRR constitute an exception to the general rules regarding the classification of positions, allowing some hedge funds to be assigned to the trading book. Therefore, the ECB is of the view that sufficient individualised information must be provided in order to benefit from this exception. In addition, the reference to the conditions for CIUs is already embedded in Article 104(5) of the CRR, as well as in paragraph 4, sub-paragraph 5 of the Guide. The ECB has modified the Guide, specifying that a request should be submitted for each underlying hedge fund.	Amendment
		Respondents indicated that the reference provided in sub-paragraph 5(v) was erroneous.	The ECB agrees with the comment and has modified the reference.	Amendment
		Respondents argued that the condition that hedge funds be listed referred to in sub-paragraph 4(iii), and the condition concerning features that might obstruct the tradability of such instruments referred to in sub-paragraph 4(ii) are overly restrictive. In addition, they argued that the latter limits the possibility of derogation only to daily NAV hedge funds. The respondents argued that the conditions for classifying exposures to hedge funds should align with those applied to collective investment undertakings (CIUs) under Article 104(8) of the CRR. The respondents also referred to the US draft rule text in that regard and the possibility of an uneven playing field.	The provisions of Article 104(5) of the CRR constitute an exception to the general rules regarding the classification of positions, allowing some hedge funds to be assigned to the trading book. Therefore, the ECB is of the view that the positions benefiting from this exemption should offer sufficient guarantees to be considered as trading items for regulatory purposes, in light of the intrinsic characteristics of hedge funds. In addition, the reference to the conditions for CIUs is already embedded in Article 104(5) of the CRR, as well as in paragraph 4, sub-paragraph 5, of the Guide.	No amendment
		Respondents argued that it is unclear whether the conditions of paragraph 4 apply specifically to the direct holding of hedge fund shares or to all types of exposures, including derivatives. They asked for clarification.	The CRR refers to “instruments in hedge funds” (Article 104(3)(i)). Therefore, it does not restrict the provision to direct holdings, but covers instruments related to hedge funds. A footnote has been added to clarify this.	Amendment
		One respondent argued that the scope of hedge funds subject to paragraph 4 of the Guide is unclear, as the CRR does not provide a clear definition of a hedge fund. The respondent proposed using a specific definition of hedge funds related to alternative investment funds.	The Guide uses the same terminology as that employed in the CRR. The Guide cannot deviate from the prescription of the CRR.	No amendment
		One respondent noted a potential typographical error concerning the exemption of banking book instruments from the trading book, which referenced Article 104(4) of the CRR.	The reference has been corrected to Article 104(5) of the CRR.	Amendment
Paragraph 6: **Equity exposures incurred under legislative programmes to stimulate specified sectors of the economy** **(Article 133(5) of the CRR)**	• Italian Banking Association • German Banking Industry Committee • European Banking Federation • AFME/ISDA	Respondents considered the specifications set out by the ECB – namely that the combined effect of meeting the criteria specified in Article 133(5) should be substantial in terms of risk reduction and generally commensurate with the reduction in risk weights from applying the derogation available under Article 133(5) – to be too strict. Some respondents asked if the ECB could grant unique prior permission for specific legislative programmes that would be allow multiple banks to make use of the lower risk weight for equity exposures subject to those programmes.	The ECB has decided to withdraw the proposed specifications in relation to Article 133(5) of the CRR. Subsequent to the ECB’s launch of the public consultation of the revisions to the Guide, the European Commission announced its intention to issue Guidelines on the use of favourable prudential treatment for investments under legislative programmes (see European Commission (2025) Savings and Investments Union: A Strategy to Foster Citizens’ Wealth and Economic Competitiveness in the EU). The ECB intends to follow the guidance provided by the European Commission.	Amendment.

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 7: **Significant risk transfer (SRT)** **(Articles 244(2) and (3) and 245(2) and (3) of the CRR)**	• Banco Santander • International Association of Credit Portfolio Managers • AFME/ISDA • Spanish Banking Association • Italian Banking Association • French Banking Federation	Respondents questioned the possibility for the ECB to implement tests to assess the significant transfer of risk under Articles 244 or 245 of the CRR and claimed that this should in fact be endorsed at EU level. They further requested that the quantitative test t) recommended in the report published by the EBA in 2020 (generally referred to as the C-test or CRT test) be amended and made subject to a new consultation to be organised by the EBA. Two respondents highlighted that, according to their understanding, Articles 244(2) and 245(2) of the CRR do not require the originator to demonstrate the significant transfer of risk to the competent authority (unlike under Articles 244(3) and 245(3) of the CRR), but rather are of the view that it is for the competent authority to demonstrate that the risk transfer is not commensurate with the RWA relief. Some of the respondents took the view that the proposed Guide, which reflects current ECB practice, goes beyond CRR requirements as it demands that the originator demonstrate that there is commensurateness of risk transfer in all cases, and in particular even if the mechanical tests set out in Articles 244(2) and 244(2) of the CRR have been passed. Two respondents considered that, on a fundamental level, the C-test does not appear to effectively evaluate the commensurateness quality, but rather aims to ensure that the risk transfer recognised by regulation is assessed more stringently than it would be if a more “economic” risk transfer measurement method were used. Another respondent proposed including the principle-based approach (PBA) test in the CRR and further formalising the provisions regarding significant risk transfer in Level 1 or Level 2 legislation. The respondent also provided concrete suggestions for reducing the time-to-market of securitisations. Two respondents stressed that the work undertaken by the Basel Committee on Banking Supervision on the high cost of credit protection had not been finalised by the Committee to date and wondered why the ECB had used the recommendation from the EBA report published in 2020. Two respondents also considered that the ECB would go beyond its powers by including, in its comprehensive review of significant risk transfer, an assessment of whether an external credit assessment institution (ECAI) has appropriate experience and expertise in the asset class being rated. Another respondent asked whether it was necessary to list the various elements that the ECB would consider when conducting a comprehensive review of significant risk transfer.	The Guide aims to provide clarity on how the ECB implements the options and discretions included in the CRR. With specific regard to SRT, the revised Guide reflects the current supervisory practices of the ECB (including the use of the C-test), with which significant institutions that are issuing SRT securitisations should be largely familiar. Pending the adoption of a delegated act by the Commission under Articles 244(6) and 245(6) or changes to the CRR that would further specify how the supervisory assessment of SRT should be conducted, the ECB considers that EBA recommendations constitute relevant and valuable input for its supervisory practices. As regards the C-test, we note that the Guide reflects the wording of Articles 244(2) and 245(2) of the CRR in that it specifies that the ECB will use the test for the purpose of assessing the commensurateness of the risk transfer, as part of the review of the SRT. This is also consistent with the EBA’s 2020 report on significant risk transfer in securitisation under Articles 244(6) and 245(6) of the Capital Requirements Regulation (in particular paragraphs 91 to 93 thereof). As to the argument that the ECB would go beyond the regulatory requirements as laid down in CRR, we note that the proposed revised Guide makes a clear distinction between the cases where SRT is sought under Articles 244(2) or 245(2) of the CRR on the one hand, and where it is sought under Articles 244(3) or 245(3) on the other. The explanations in the Guide do not impose additional requirements; rather, they spell out how the ECB operationalises the assessment of the requirements set out in the CRR. On the suggestions on how to reduce the time-to-market of securitisations, the fast-track SRT process currently undergoing testing might address some of the concerns raised by the respondent. Regarding the references to the cost of protection and to external credit assessment institutions, this is an integral part of the comprehensive review mandated under the 2014 EBA Guidelines on SRT (notably in Title III, section 7 of those Guidelines). To avoid any misunderstanding, the Guide will be amended to refer generally to the said EBA Guidelines to describe how the comprehensive review is conducted.	Amendment.

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 7: **Significant risk transfer (SRT)** **(Articles 244(2) and (3) and 245(2) and (3) of the CRR)**	• Deutsche Bank • German Banking Industry Committee • AFME/ISDA	For the application of the quantitative test (generally referred to as the C-test or CRT test) on pages 42-43, two of the respondents proposed aligning the end-date of the securitisation with the Guidance for the ECB Fast-track approval process for the purpose of allocating expected and unexpected losses in this test. The same respondents also proposed that the end-date should be the date of the time call (calculated as the last day of the replenishment period + WAL) or the date of the clean-up call, whichever is first. Another respondent considered that the scenarios proposed in the report published by the EBA in 2020 have not been tested on real securitisation transactions and that they need to be adapted.	The Guide only mentions that the test will be considered under different scenarios, covering not only base-case but also stress conditions. The Guide does not require the use of specific scenarios for the calculation of the C-test. It is therefore not necessary to include the additional details proposed by the respondents. Likewise, since the Guide does not refer to the EBA scenarios specifically, there is no need to amend the Guide.	No amendment
Paragraph 7: **Significant risk transfer (SRT)** **(Articles 244(2) and (3) and 245(2) and (3) of the CRR)**	Austrian Federal Economic Chamber	The respondent recommended that the ECB clarify the following: a) In cases where SRT is assessed under Article 244(2) or 245(2) of the CRR and the ECB intends to adopt a formal decision objecting to the SRT in accordance with Article 244(2) or 245(2), as applicable, this formal decision must be taken and communicated to the supervised institutions prior to the expected closing date. b) In cases where the ECB does not object to the SRT, the supervised institution will be informed of the mentioned "operational act"/"non-objection" also prior to the expected closing date.	For the originator to recognise the capital benefits of SRT, the CRR only requires a positive decision by the competent authority when SRT is achieved under Articles 244(3)/245(3) of the CRR, but not when SRT is achieved under Articles 244(2)/245(2) of the CRR. In line with current practices, the ECB intends to provide feedback in all cases before origination, under the methods referred to in the Guide: in cases where SRT is assessed under Article 244(2) or 245(2) of the CRR, the ECB intends to adopt a formal decision only where it objects to the SRT in accordance with Article 244(2) or 245(2), as applicable. Where the ECB does not object to the SRT, it intends to use an operational act.	No amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 10: **Derogation to calculate a separate interest, leases and dividends component for specific subsidiaries** **(Article 314(3) of the CRR)**	• Banco Santander • Spanish Banking Association • French Banking Federation • European Banking Federation • AFME/ISDA	Respondents argued that the conditions detailed in the Guide regarding Article 314(3) of the CRR do not align with the regulator's intent in that they include operational losses as a qualifier for the operational risk capital requirements calculation. They emphasised a discrepancy between a separate interest, leases and dividends component (ILDC) at the consolidated level and the net interest margin profile of the soliciting subsidiary that could lead to an overestimation of the capital requirements for operational risk at the consolidated level. Moreover, it was pointed out that the conditions included by the EU legislator in CRR III for approval of a separate ILDC are almost identical to the conditions required in CRR II for the Alternative Standard Approach (ASA). If the additional conditions included in the ECB Guide were included in the CRR, those institutions with an ASA approval would not qualify for the same treatment under CRR III.	The ECB acknowledges and fully respects the legislators' decision to disregard historical operational loss data for all institutions in the calculation of own funds requirements for operational risk. The ECB understands, however, that the choice of the co-legislators concerns the calculation of the business indicator under Article 314(1) and (2) of the CRR. Given this context, it is important to clarify that the ECB's suggested supervisory approach to consider historical losses is only limited to the exercise of the discretion granted to competent authorities to allow a derogation from Article 314(2) of the CRR, which provides the formula for the calculation of the interest, leases and dividend component of the business indicator. The ECB is of the view that the use of historical losses for the purposes of assessing whether the use of the derogation provides an appropriate basis for calculating the EU parent institution's own funds requirement for operational risk, as required under Article 314(3)(c) of the CRR, does not contradict the aim of the co-legislators expressed in recital 46 of Regulation (EU) 2024/1623, as it does not include historical losses in the calculation of the own funds requirements for operational risk for credit institutions which do not request approval for the derogation under Article 314(3) of the CRR before 31 December 2027. However, the wording of the criterion has been amended, being more principle-based and allowing a greater margin of appreciation in the case-by-case assessment of whether the conditions under Article 314(3) of the CRR are met. The ECB's guidance on the inclusion of operational risk loss data when assessing applications for the derogation under Article 314(3)(c) of the CRR represents a framework which is not rigidly prescriptive, but rather serves as soft indicative guidance for JSTs in assessing requests for supervisory permission.	Amendment
		The respondents suggested using the well-defined "exposure class" concept instead of the term "similar loan".	The ECB accepts the suggestion and has amended the wording accordingly.	Amendment
Paragraph 11:	• Deutsche Bank • Association for Financial Markets in Europe	The respondents stated that paragraph 12(3) of the draft Guide requires comprehensive lists of instruments to be maintained. They referred to paragraph 13(8), which, in the context of permission to use the alternative definition of sensitivities, defines a similar inventory. The respondents asked the ECB to clarify that the inventory need not include any information already provided in other sections of the Guide, to avoid repetition and redundancy.	The expectation is aimed at detailing the scope of banks' internal review processes. Due to proportionality considerations and also in comparison with the expectations for internal models (CDR 2024/1085), the requirement to submit an inventory has been removed from this part of the Guide. Instead, if deemed necessary, the relevant information will be covered by the planned Self Assessment process.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Internal review of the use of the Alternative Standardised Approach (ASA) to the satisfaction of the competent authority and frequency of such review (Article 325c of the CRR)		The respondents claimed that requiring institutions – as part of each annual internal review – to include in the documentation a follow-up on previous findings results in an excessive and duplicative operational burden. It is argued that institutions typically have robust internal processes in place for monitoring the remediation of all market risk-related findings. The respondents suggested deleting the requirement that the audit report be accompanied by a remediation plan which includes, where applicable, a follow-up on remedial actions derived from previous independent reviews. Instead, it should be required that institutions provide a follow-up on remedial actions identified in previous independent reviews upon request by the competent authority.	The ECB understands that the request to provide documentation concerning the follow-up on previous findings on a regular basis may be burdensome. Additionally, the term “follow-up” is not defined, leading to potentially different readings. To ease the workload associated with this requirement while focusing on its objective, the wording has been changed such that only a “status update” on the remediation plan is requested.	Amendment
Paragraph 12: **Permission to use the alternative definition of sensitivities (Delta and Vega) (Article 325t(5) and (6) of the CRR)**	• European Banking Federation • AFME/ISDA • Deutsche Bank	Respondents recommended reviewing the requirements related to sensitivities in the context of pricing models and allowing banks to leverage on existing controls and documentation. There should not be a requirement to create new inventories or processes that isolate sensitivities from the broader framework of pricing model management.	The ECB acknowledges that in this context existing documentation should be used as much as possible. Therefore, to reduce the burden on applicant institutions the ECB’s expectations on the required documentation have been amended by deleting the consulted requirement to submit the current and last three relevant management and P&L reports.	Amendment
		Respondents asked for an expansion of the scope of the qualitative criterion in paragraph 13(1) of the draft Guide to align more closely with industry practices, such as using hazard rates instead of credit spreads.	The definition of hazard rates as an additional non-material risk factor would represent an expansion of the scope of risk factors that would go beyond the scope of the Article 325t of the CRR.	No amendment
		Respondents requested clarification regarding the statement “already approved applications remain valid” in Section 2, Chapter 3, paragraph 13(3) of the draft Guide. Additionally, they sought confirmation that the revised ECB Guide supersedes all previous obligations for the use of alternative definitions of sensitivities. More specifically, the respondents asked that any conditions or restrictions that were set at the time of the original approval cease to be applicable with the publication of this revised Guide.	The ECB confirms that already approved applications remain valid. However, as regards the conditions and/or restrictions that were set by the JST at the time of the original approval, these are still applicable. The ECB Guide cannot (legally) override a Supervisory Board decision, which would have been taken based on the applicable framework at that time.	No amendment
		One respondent requested an amendment to Section 2, Chapter 3, paragraph 13(5) of the draft Guide, which requires documentation on whether the alternative sensitivity definition is “owned” by an independent risk unit. The respondent argued that ownership is not required under Article 325t(a) and (b) of the CRR and suggested replacing “owned” with “used”.	The ECB acknowledges the point and has made an amendment.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		Respondents asked for clarification on the tasks of validation, and whether a periodical validation is necessary.	The ECB expects the independent validation unit to assess the initial application of alternative sensitivities as well as when changes in the definitions occur, as outlined in 12(7) of the Guide (paragraph 13(7) of the draft Guide), which clarifies that ongoing compliance with respect to the conditions set out in Article 325t(5) and (6) of the CRR has to be continuously ensured. This validation specifically refers to the internal use and appropriateness of the internal sensitivity definitions (e.g. numerical stability in combination with the pricing model) used for the purpose of ASA calculations, in line with the conditions set out in Article 325t(5) and (6) of the CRR. If a bank wants to leverage on existing validation processes for its pricing models, it must be ensured that the ASA, and in particular the specific aspects falling under Article 325t(5) and (6) of the CRR, are covered by these validation processes. Additionally, the ECB has expanded 12(6) of the Guide (paragraph 13(6) of the draft Guide) to clarify that internal audit is already expected to periodically review the overall accuracy of the process for deriving sensitivity computations, in accordance with Article 325c(6)(c) of the CRR. Involvement of the internal audit function in the process of ongoing compliance, outlined in 12(7), is not expected by the ECB.	Amendment
		Respondents asked for clarification on the monitoring process for the use of alternative sensitivities, namely: whether monitoring is supposed to be qualitative, as opposed to the quantitative approach typically required under the current approvals process; whether it may be covered by monitoring processes already in place for the performance of pricing models; and whether the expectation set by the Guide to generally identify regulatory non-compliance is set too broadly.	The ECB has expanded (12)7 of the Guide (paragraph 13(7) of the draft Guide) to clarify that institutions need to be compliant with the conditions set out in Article 325t(5) and (6) of the CRR on an on-going basis. The ECB expects institutions to track changes in the implementation of alternative sensitivity definitions, including changes in methodological definitions, in the scope of instruments bearing alternative definitions, or in the computation process used to derive alternative sensitivities. In this context, institutions are expected to implement an appropriate process to identify such changes and assess the ongoing compliance of alternative sensitivity definitions with respect to the criteria set out in the Guide.	Amendment
		One respondent asked for clarification that the required documents listed are only relevant for the initial application. The respondent also claimed that providing P&L reports would have a very limited added value.	As the listed documents were indeed intended for the initial application, the ECB agrees to clarify this in the Guide accordingly. The ECB agrees to not request P&L reports where the alternative sensitivities are applied and will adjust the Guide accordingly.	Amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		Additionally, respondents claimed that involvement of the internal audit function should not be requested, either in the initial application to use alternative sensitivities or in the ongoing monitoring carried out to ensure compliance with Article 325t(5)(6) of the CRR where changes have occurred.	The ECB does not agree to fully decouple the internal audit function from involvement in the application process. The ECB agrees to not request internal audit's involvement in the ongoing process for ensuring continuous compliance with the provisions of Article 325t(5) and (6) of the CRR. This is merely an operational task. It should be noted that the expectations outlined in the Guide with regards to Article 325c of the CRR remain valid. Where a bank applies for permission to use alternative sensitivities, the ECB expects internal audit to review the application package which is delivered to the ECB as a one-off assessment.	No amendment
		One respondent proposed basing the inventory of applied alternative sensitivities on the pricing model documentation of the bank, in order to avoid maintaining an ad hoc (and complex) inventory.	The ECB understands the rationale behind the proposal to base the inventory on pricing model documentation. However, it is of the view that a standardised inventory is an efficient method of maintaining and updating information on alternative sensitivities.	No amendment
Paragraph 15: **Use of internal ratings to determine credit quality steps for SA-CVA and Basic Approach Credit Valuation Adjustments (BA-CVA) (Article 383p, 383s and 384(2) of the CRR)**	• Banco Santander • Spanish Banking Association • French Banking Federation • European Banking Federation • AFME/ISDA	Respondents asked the ECB to clarify that already approved applications will remain valid.	ECB confirms that already approved applications remain valid.	No amendment
		Respondents generally disagree with the second condition (related to IRB findings) to be met for the use of internal ratings to determine credit quality steps for CVA approaches. Respondents deem the second condition too conservative. More specifically, the use case for probability of default (PD) models in the context of CVA is much simpler than the original use case for IRB risk weights, as PD models will only be used to determine whether a counterparty falls into the investment grade (IG) or high yield (HY) categories. According to the respondents, there are cases where an IRB model may encounter high severity findings accompanied by open limitations and conditions, yet it still effectively distinguishes between IG and HY counterparties. Some respondents also suggested allowing institutions to use IRB models with a supervisory pre-approval by default. This would imply that institutions need to formally apply to use these models, but if the application has been submitted, during the evaluation period the institution could apply those models until the Supervisor a) denies approval or b) proposes changes or limitations to the scope proposed by the supervised entity.	ECB recognises the point raised by the industry. It has revised the Guide such that the second condition is an additional aspect that could be considered by the JSTs, which have more flexibility when assessing the relevance of the findings.	Amendment

Comments on Section II, Chapter 4

Institutional protection schemes

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 5: Recognition of institutional protection schemes for prudential purposes (Article 113(7) of the CRR)	European Association of Cooperative Banks Italian Banking Association National Association of German Cooperative Banks Austrian Federal Economic Chamber, Division Bank and Insurance	Respondents argued that the amendments introduced with respect to intervention rights in the case of IPS support measures are acceptable in general; however, they argued that the footnote defining such support measures should be deleted, as non-financial support measures would not constitute support measures which are subject to conditions.	The ECB agrees with the respondents, and the footnote has been deleted.	Amendment
		In addition, respondents raised concerns regarding predefined durations for decision-making. This could restrict the flexibility of the IPS in cases where a longer period for deciding on support measures were possible. An alternative formulation was proposed by the respondents.	The ECB agrees with the respondents, and sub-paragraph (3)(ii) has been amended.	Amendment
		Concerning stress scenarios, respondents argued that the additional specifications introduce unnecessary complexity and higher requirements which could compromise the truthfulness and reliability of the results. Also, these amendments would reduce the flexibility needed to design stress test scenarios, requiring the creation of unrealistic scenarios which would not be in line with EBA/GL/2018/04 paragraph 79. Moreover, the wording “internal spill-over effects between IPS entities” and the link to regulatory compliance was perceived as unclear and should be deleted.	The ECB has clarified its amendments, and sub-paragraph (3)(iv) has been adjusted. As IPS members might materially benefit from IPS-related capital relief which results from reductions in capital requirements for intra-IPS exposures, it is essential for an IPS and its members to understand how such exposures could be affected by stress scenarios. To achieve a meaningful outcome of the stress tests, potential contagion between the IPS member institutions which can propagate shocks will be adequately considered. In this context, the ways in which such stress scenarios could impact the individual member institutions’ ability to provide additional contributions to the IPS funds will also be monitored.	Amendment
		Respondents stated that no additional requirements in terms of segregation between IPS and deposit guarantee scheme (DGS) ex-ante funds, which are not strictly included in Article 113 (7) of the CRR and the requirements of the DGS Directive, should be imposed by the ECB. As this new passage would contradict the second sub-paragraph of Article 4(2) of EU Directive 2014/49 (the Deposit Guarantee Scheme Directive), they argued that it should be deleted without replacement.	The Guide sets out the ECB’s understanding of the conditions required to conclude that “the arrangements ensure that the institutional protection scheme is able to grant support necessary under its commitment from funds readily available to it”, as stipulated under Article 113(7)(b) of the CRR. From a supervisory perspective, this means that an IPS must have the necessary flexibility to provide sufficient and timely support under all circumstances, without legal impediments resulting from the fund being simultaneously used for the purpose of a DGS. These two types of scheme serve different purposes: IPSs protect their member credit institutions, while DGSs protect depositors, in particular, against the consequences of the insolvency of a credit institution. For these reasons, a segregated IPS fund is vital.	No amendment
		One respondent argued that stress testing already represents a forward-looking element that anticipates the impact of a potentially deteriorating macroeconomic environment. Furthermore, this reference would exclude an institution-related forward-looking view.	The ECB acknowledges that stress testing already covers that aspect; however, stress tests are normally conducted on a yearly basis. To ensure that the IPS is aware of the risk situation of its members based on up-to-date data, frequent monitoring activities must also contain a forward-looking element, for example sensitivity analyses. This does not imply that the ECB is of the opinion that it is sufficient to focus only on the impact of a potentially deteriorating macroeconomic environment.	No amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		Respondents argued that a link between clearly defined indicators and IPS measures in the sense of a trigger does not do justice to the matter, particularly in the area of monitoring. There would be a lack of individual consideration of qualitative factors, which could be decisive for the further development of the institution.	The ECB has clarified its amendments, and sub-paragraph (4)(v) has been adjusted. In this context, the ECB would like to emphasise that such triggers will simply ensure that a decision-making process is initiated in a timely manner. This does not prescribe that IPS measures need to be triggered. It remains the responsibility of the IPS and its bodies to decide on IPS measures.	Amendment
		Respondents argued that it is not clear how a credit institution could be expected to ensure that an IPS from which it is about to leave complies with regulatory requirements and vice versa. Such new obligations between IPS and members which are leaving the IPS are not possible in practice. Furthermore, the member leaving the IPS would have no means of ensuring that that IPS complies with the requirements, even if it had the relevant knowledge.	The ECB has clarified its amendments, and sub-paragraph (7) has been adjusted to clarify that a member institution that has decided to leave an IPS should ensure that it meets regulatory requirements after leaving the IPS. The IPS should also ensure that it remains resilient after the departure.	Amendment
		One respondent stated that shortening the notice period of 24 months for ending the IPS would not be in line with Article 113(7) of the CRR.	The ECB acknowledges the remark, and the respective reference has been deleted. However, if the re-organisation of an IPS entails terminating the current one and establishing a new one, the ECB will consider shortening the notice period if this re-organisation results in an improvement from a regulatory perspective.	Amendment
		Respondents argued that Article 113(7)(i) of the CRR does not provide for a regular renewal of the permission grantable under Article 113(7) of the CRR. Such permission should only be revoked in the event that the requirements for recognition are no longer met. From the current draft, it might be interpreted that approval is granted periodically. Furthermore, one respondent argued that the use of the plural for supervisory authorities in this context is misleading, as in Germany only one authority (Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)) is responsible for the supervision of the system.	As the reference concerned is copied directly from Article 113(7)(i) of the CRR, the reference will not be adjusted. If deficiencies are identified, the ECB may consider conducting a review in order to assess whether the requirements for recognition are still met by the IPS members. As each individual member institution needs to ensure that the conditions defined in Article 113(7) of the CRR are fulfilled, the respective competent authority is responsible for monitoring compliance. For an IPS consisting of significant and less significant institutions, both the ECB and the national competent authority (NCA) would be responsible for monitoring compliance.	No amendment
		One respondent argued that cooperation between the ECB and NCA with regard to the supervision of less significant institutions and significant institutions is regulated by the SSM Regulation and offers the ECB and NCA every opportunity to obtain the information required for supervision directly (from the institutions) or indirectly (via the NCA). However, this does not mean that the same information must always be available at both the ECB and at the NCA.	The ECB requires (i) granular information also pertaining to individual IPS member institutions which are classified as less significant institutions and (ii) to be enabled to request additional information directly from the IPS in case of need, in so far as this information is relevant for assessing the IPS's systems for the monitoring and classification of risk, and whether these systems give a complete overview of the risk situations of all the individual members and the IPS as a whole. This is acknowledged in Article 10(1) of Guideline (EU) 2016/1993 in conjunction with Article 3 of the same Guideline. This provision stipulates, among other things, that the ECB and the respective NCA responsible for the supervision of IPS members shall monitor at regular intervals the adequacy of the IPS's systems for monitoring and classifying risk pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013.	No amendment

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
		The respondent argued that the term “key regulatory indicators” represents regulatory capital ratios. Besides, the quantification of prudential relief can also be done by the IPS itself and reported to the IPS members afterwards.	The ECB agrees that with respect to the relief available under Article 113(7) of the CRR, it is indeed referring to the impact on the IPS members’ regulatory capital ratios.	No amendment

Comment on Section II, Chapter 5

Large exposures

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 3: **Compliance with the large exposures requirements** **(Articles 395 and 396 of the CRR)**	German Banking Industry Committee	See Section 2.3 below (Comments on the Amending Recommunication – Part Two, Section Ia, 2, in conjunction with Annex).	See Section 2.3 below.	

Comments on Section II, Chapter 11

Governance arrangements and prudential supervision

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 3: **Combining the risk committee and the audit committee** **(Article 76(3) of the CRD)**	• European Banking Federation • German Banking Industry Committee	The respondents argued that the asset size criterion for the designation of a subsidiary as “significant” for the purposes of Article 76(3) of the CRD should increase from €5 billion to €15 billion. Keeping the threshold as it currently stands would mean that institutions that are not small and non-complex credit institutions (SNCIs) would be immediately deemed as “significant”. The respondents suggested that, if an increase is not possible, then it should be clarified that this asset size is relevant only for the purposes of Article 76(3) of the CRD.	The criteria specified in this paragraph refer exclusively to the designation of an institution/subsidiary as “significant” for the purposes of Article 76(3) of the CRD. The ECB has not consulted on changing this policy. It notes that an increase in the asset size criterion could lead to an increase in the number of institutions combining their risk committee with their audit committee, which could potentially have adverse consequences in terms of governance. However, it should be remembered that, as specified in the introduction to the Guide, the Guide is a non-binding instrument and the ECB may deviate from the policy stance set therein, provided that there are clear and sufficient reasons for doing so.	No amendment

Comments on Section III, Chapter 2

Capital requirements

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Paragraph 2: **Calculation of the services component for institutional protection schemes (operational risk)** **(Article 314(5) of the CRR)**	• French Banking Federation • European Banking Federation	Since the EBA RTS regarding Article 314 of the CRR have not yet been published, the respondents asked for clarity on the process to be followed (for example, type of notification needed and information to be provided).	At this stage, without the final RTS being published by the EBA, the ECB is unable to issue detailed guidance or establish specific processes. The RTS will provide essential technical standards and details that are crucial for implementing the provisions of Article 314 consistently and effectively across all institutions. Issuing guidance prior to the finalisation of the RTS could lead to inconsistencies and potential misalignments with the forthcoming standards.	No amendment

2.2 Comments on the amending Regulation

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Article 1 – Subject matter and scope	German Banking Industry Committee	The respondent highlighted that the ECB Regulation should, mutatis mutandis, apply to financial holding companies classified as significant by the ECB that have to comply with the provisions of the CRR on the basis of the consolidated situation.	The ECB is of the view that, irrespective of the fact that Article 1 of the ECB Regulation refers only to credit institutions, the provisions thereof also apply, to the extent applicable, to financial holding companies. We note that this is consistent with the wording of the SSM Regulation, which also refers generally to "credit institutions", although the ECB also includes financial holding companies, when relevant, in its supervisory actions.	No amendment
Article 1 (2) – Transitional arrangements for ECAI credit assessments of institutions including assumptions of implicit government support	• Italian Banking Association • German Banking Industry Committee • French Banking Federation • European Banking Federation • AFME/ISDA	Some respondents welcomed the extension of the transition period up to July 26 as set out in the amending Regulation. However, they requested that the ECB be prepared to extend this deadline until at least three ECAIs are able to provide ratings for institutions excluding assumptions of implicit government support (XGS ratings) and to provide time for the European Supervisory Authorities to conduct the relevant mapping process. Other respondents called for the ECB to permit the continued use of ratings including assumptions of implicit government support until the end of 2029.	The ECB acknowledges the currently low availability of XGS ratings in the EU and the consequent need for a transitional period, during which credit institutions and relevant financial market participants can take the steps necessary to eliminate the use of ratings for institutions that include assumptions of implicit government support. Taking into consideration the industry feedback and the time taken to finalise the revisions to the O&D policies following the public consultation, the ECB has decided to extend the transitional period by an additional six months, meaning that institutions may continue to use such ratings until 1 January 2027.	Amendment
Article 9(7) – Scope of application of ECB exemptions on intragroup large exposures permissions	German Banking Industry Committee	The respondent requested that in order to facilitate the transition to the provision of Article 9(3) in conjunction with Annex I by 31 December 2028 for institutions in Member States which have exercised the option of Article 493(3)(c) of the CRR to fully or partially exempt exposures to the entities of the supervised group, and to avoid friction, they should also be given the opportunity for an exemption under Article 9(3).	The ECB is of the view that the requested amendment would be contrary to the principle of equal treatment of credit institutions. The ECB notes that it can only make use of the exemption under Article 400(2)(c) of the CRR where the conditions specified in Article 400(3) of the CRR are met	No amendment

2.3 Comments on the amending Recommendation

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Part Two, Section Ia	German Banking Industry Committee	The respondent requested that, in order to ensure the fair treatment of the SNCIs concerned, an obligation for prior information and an appropriate lead time (in relation to a withdrawal of the SNCI classification) should be added.	The amending Recommendation aims to clarify the application of criteria (h)* of the SNCI definition, ensuring that the outcomes of the risk profile analyses performed by NCAs on individual less significant institutions (LSIs) are consistent with the SNCI assessment. It does not aim at prescribing the full process to be followed by NCAs for SNCI classification. The policy is phrased in a general manner and accommodates existing processes put in place by NCAs for the purpose of SNCI classification.	No amendment
Part Two, Section Ia, 2, in conjunction with Annex – Large exposures	German Banking Industry Committee	The respondent argued that the Guide's specifications in relation to Article 396(1) of the CRR sets a rigid limit of 100% of the capital base and is not aligned with the EBA Guidelines on breaches of large exposure limits and the measures to be taken to restore compliance with those limits (EBA/GL/2021/09). Moreover, the respondent stated that the application of this limit to LSIs as a result of the ECB Recommendation also risks undermining Article 396(1), second paragraph: "Where the amount referred to in Article 395(1) of EUR 150 million applies, competent authorities may, on a case-by-case basis, allow the limit of 100% in relation to the institution's Tier 1 capital to be exceeded."	The ECB did not propose any amendments to its supervisory policy in relation to Article 396(1) of the CRR in the public consultation. The ECB will consider requests from credit institutions in accordance with Article 396(1) on a case-by-case basis.	No amendment

2.4 Other comments

Paragraph	Respondents	Comment	ECB response and analysis	Amendment
Several places in the Guide	Austrian Federal Economic Chamber, Division Bank and Insurance	The respondent noted that the draft revised Guide contained references to Commission Implementing Regulation (EU) No 680/2014 which has, however, been replaced by Commission Implementing Regulation (EU) 2021/451 of 17 December 2020.	The ECB agrees with the comment and has made the necessary amendment.	Amendment
Preferential risk weights for residential real estate for the purposes of output floor calculation	French Banking Federation	The respondent requested that the ECB provide further details on the verification process mentioned in Article 465(5) of CRR III (risk weight of residential real estate for output floor calculation.).	The ECB is of the view that the criteria set out in Article 465(5) are self-explanatory and that the verification process does not require further elaboration in the Guide.	No amendment

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For specific terminology please refer to the SSM glossary (available in English only).