EUROPEAN CENTRAL BANK

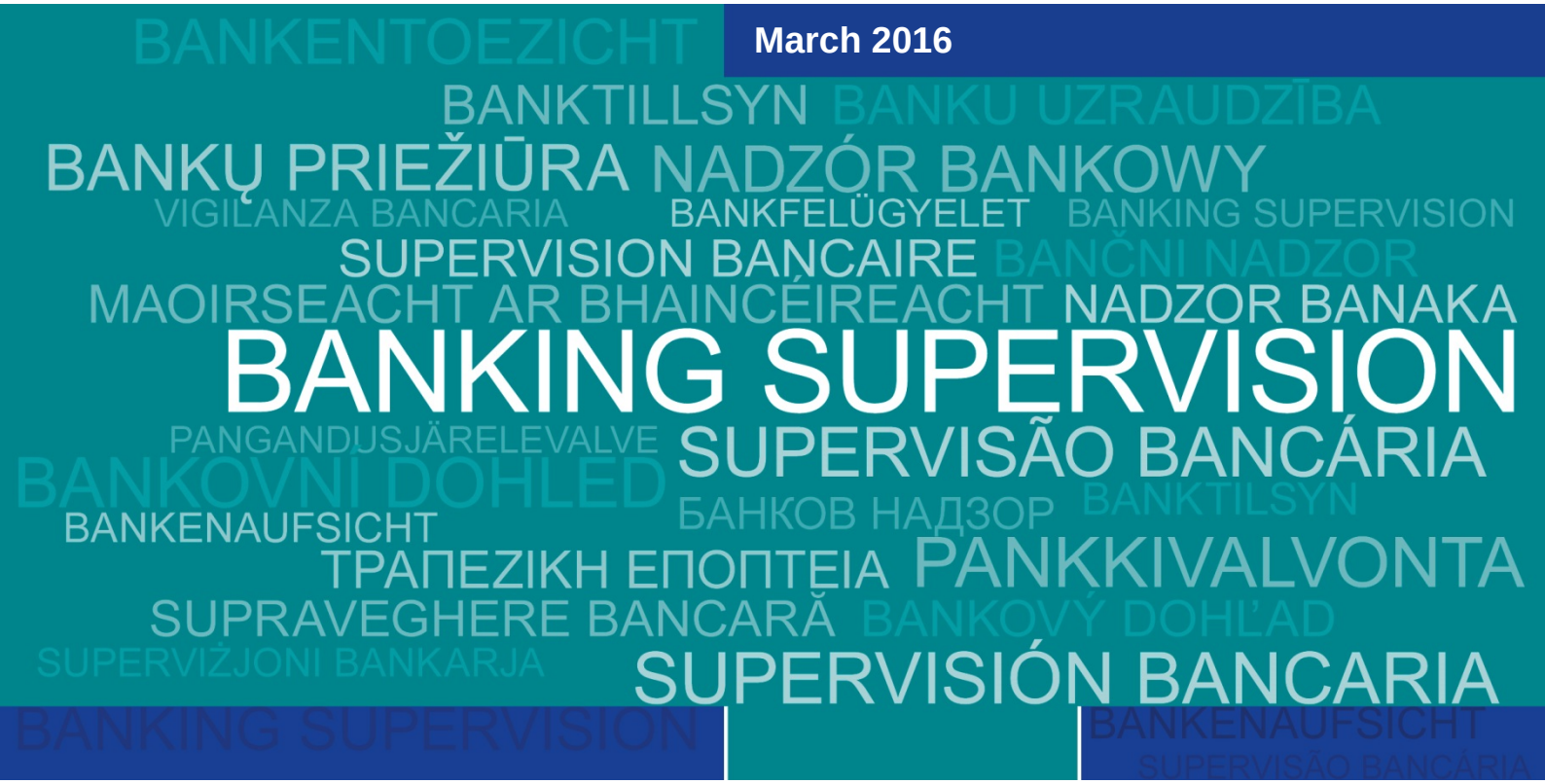
BANKING SUPERVISION

ECB Guide on options and discretions available in Union law

Note: This publication is discontinued.

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March 2016



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Section I
Overview of the Guide on options and discretions

1 Purpose

1. This Guide sets out the ECB's approach concerning the exercise of options and discretions (ODs) provided for in the EU legislative framework (Regulation (EU) 575/2013 of the European Parliament and of the Council[1] (CRR) and Directive 2013/36/EU of the European Parliament and of the Council[2] (CRD IV)) and which concern the prudential supervision of credit institutions. It aims to provide coherence, effectiveness and transparency regarding the supervisory policies that will be applied in supervisory processes within the Single Supervisory Mechanism (SSM) as far as the significant credit institutions are concerned. In particular, it aims to assist the Joint Supervisory Teams (JSTs) in the performance of their tasks with regard to the principles the ECB intends to follow in supervising significant credit institutions.

2 Scope, content and effect

1. This Guide is relevant for credit institutions that have been designated as significant credit institutions by the ECB.

2. The Guide sets out the general aspects which will be taken into account by the ECB in determining the prudential requirements for significant credit institutions. The policies set out in this Guide will be used as guidance by the JSTs when assessing individual requests and/or decisions that would involve the exercise of an option or discretion.

3. The structure of the Guide mirrors the structure of the relevant legislative acts (e.g. CRR/CRD IV). The Guide should be read in conjunction with the relevant legal texts.

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

4. The terms used in the Guide have the same meaning as defined in the CRR/CRD IV and Council Regulation (EU) No 1024/2013 (SSM Regulation)[3], with the exception of cases where a term is specifically defined in this Guide for the purposes of this Guide only.

5. The references to CRD IV and CRR should be considered as including any regulatory or implementing technical standards provided for in those acts which are already adopted, or as soon as they are adopted by the European Commission and published in the Official Journal of the European Union. In accordance with CRD IV, national implementing law must also be taken into account (see also Paragraph 11 below).

6. The policies in this Guide take into account the results of an impact assessment exercise, as well as the outcome of the public consultation carried out between 11 November and 16 December 2015. The ECB carefully examined the comments received during the consultation process and provided its own assessment in a Feedback Statement, which was published on 24 March 2016. In addition, the ECB's assessment took into account the state of implementation of ODs across SSM jurisdictions and considered the treatment of the ODs by the Basel Committee on Banking Supervision, as well as the regulatory approach recommended by the European Banking Authority (EBA).

7. The final policy choices reflected in this Guide aim to achieve the objectives of the SSM, as specified in Recital 12 of the SSM Regulation, i.e. to "*ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to the supervision of the highest quality*". In this context, the policy choices take into account not only the specific features of individual credit institutions, but also of their business models, as well as indicators related to territories of the participating Member States. Furthermore, the assessment that the ECB will carry out in individual cases will respect the specifics and particular features of significant credit institutions and different markets.

8. This Guide does not establish new regulatory requirements and the specifications and principles included herein should not be construed as being legally binding rules.

9. The guidance included in each policy choice sets out the approach to be followed by the ECB in carrying out its supervisory tasks. If, however, in specific cases, there are factors that justify departing from this guidance, the ECB is empowered to take a decision that departs from the general policy established in this Guide, provided that

[3] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

clear and sufficient reasons are supplied for the decision. The rationale of this divergent policy choice must also be compatible with the general principles of EU law, in particular equal treatment, proportionality and the legitimate expectations of supervised entities. This is consistent with established case-law of the Court of Justice of the EU where internal guidance, such as this Guide, is defined as rules of practice from which EU institutions may depart in justified cases[4].

10. The ECB reserves the right to review the policy guidance set out in this document to take account of changes in legislative provisions or specific circumstances, as well as the adoption of specific delegated acts that may regulate a specific policy issue in a different way. Any changes will be made public and take due account of the principles of legitimate expectations, proportionality and equal treatment referred to above.

11. When setting out its policy stance as provided for in this Guide, the ECB acts within the limits of applicable EU law. In particular, as regards cases where this Guide refers to ODs in CRD IV, the ECB sets out its policy stance without prejudice to the application of national legislation transposing directives, in particular CRD IV, where a relevant policy choice is already adopted in such national legislation. The ECB will also abide by the applicable EBA Guidelines, within a "comply or explain" framework pursuant to Article 16 of Regulation (EU) No 1093/2010.

12. Finally, the policies defined in this Guide are without prejudice and are not applicable to the ODs available in EU law and already exercised by the European Central Bank under Regulation (EU) 2016/445.

[4] See, indicatively, paragraph 209 of the judgement of the Court of Justice of the EU of 28 June 2005 in Joined Cases C-189/02, C-202/02, C-205/02 to C-208/02 and C-213/02: "*The Court has already held, in a judgment concerning internal measures adopted by the administration, that although those measures may not be regarded as rules of law which the administration is always bound to observe, they nevertheless form rules of practice from which the administration may not depart in an individual case without giving reasons that are compatible with the principle of equal treatment. Such measures therefore constitute a general act and the officials and other staff concerned may invoke their illegality in support of an action against the individual measures taken on the basis of the measures.*"

Section II
The ECB's policy for the exercise of options and discretions in the CRR and CRD IV

This Section sets out the specific policy guidance that the ECB intends to follow when assessing individual applications by supervised credit institutions which would involve the exercise of the options and discretions included herein. The purpose of this Section is to assist the Joint Supervisory Teams in their supervisory tasks, as well as to inform the credit institutions and the general public about the ECB's policy in this area in the interests of openness and transparency.

Chapter 1
Consolidated supervision and waivers of prudential requirements

1. This Chapter sets out the preferred policy choice of the ECB on the general principles of consolidated supervision, as well as on waivers from certain prudential requirements.

2. Articles 6 to 24 of Part I of the CRR, as well as Commission Delegated Regulation 2015/61[5], set out the relevant legislative and regulatory framework.

3. CAPITAL WAIVERS (Article 7 of the CRR)

The ECB is of the view that the application of prudential requirements may be waived for subsidiaries of credit institutions, as well as parent credit institutions, where both the subsidiary and the parent credit institution are authorised and supervised in the same Member State, following a case-by-case assessment and provided that the conditions set out in Article 7(1), (2) and (3) of the CRR are satisfied.

For the purposes of this assessment, the ECB will consider the following factors.

- **Article 7(1) of the CRR, on the waiver of requirements for subsidiary institutions**

[5] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

(1) To assess whether the condition laid down in Article 7(1)(a) that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the subsidiary's parent undertaking has been met, the ECB plans to verify that:

(i) the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;

(ii) the formal decision-making process regarding the transfer of own funds between the parent undertaking and subsidiary ensures prompt transfers;

(iii) the by-laws of the parent and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the parent undertaking;

(iv) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(v) no third parties[6] are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(vi) the grant of a waiver has duly been taken into account in the recovery plan and, if any, the group financial support agreement;

(vii) the waiver has no disproportionate negative effects on the resolution plan;

(viii) the COREP "Group Solvency" template (Annex I to Commission Implementing Regulation (EU) No 680/2014[7]), which aims to provide a global view of how risks and own funds are distributed within the group, shows no discrepancy in this regard.

(2) In assessing compliance with the requirement laid down in Article 7(1)(b) of the CRR that either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest, the ECB will take into account whether:

(i) the institutions comply with the national legislation implementing Chapter 2 of Title VII of CRD IV;

(ii) the supervisory review and evaluation process (SREP) for the parent institution/undertaking shows that the arrangements, strategies, processes

[6] Third parties are any party that is not the parent, a subsidiary, a member of their decision-making bodies or shareholder.

[7] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

and mechanisms it has implemented ensure the sound management of its subsidiaries;

(iii) the waiver has no disproportionate negative effects on the resolution plan;

(iv) (with regard to risks being of negligible interest) the subsidiary's contribution to the total risk exposure amount does not exceed 1% of the total exposure amount of the group or its contribution to total own funds does not exceed 1% of the total own funds of the group[8]. Nonetheless, in exceptional cases the ECB may apply a higher threshold if duly justified. In any case, the sum of the contributions of the subsidiaries considered negligible in terms of the total risk exposure amount must not exceed 5% of the total exposure amount of the group and their contributions to total own funds must not exceed 5% of the total own funds of the group.

(3) In assessing compliance with the requirement laid down in Article 7(1)(c) that the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary, the ECB intends to take into account whether:

(i) senior management of the parent undertaking is sufficiently involved in strategic decisions, setting the risk appetite and the risk management of the subsidiary;

(ii) the risk management and compliance functions of the subsidiary and parent undertaking fully cooperate (e.g. the control functions of the parent have easy access to all the necessary information of the subsidiary);

(iii) the information systems of the subsidiary and parent undertaking are integrated or, at least, fully aligned;

(iv) the subsidiary to be waived complies with the group risk management policy and the risk appetite framework (the limit system in particular);

(v) the SREP for the parent institution does not show deficiencies in the area of internal governance and risk management.

(4) In assessing compliance with the requirement laid down in Article 7(1)(d) that the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary, the ECB plans to verify that:

(i) there are no side agreements that impede the parent undertaking from imposing any measures necessary to steer the group towards compliance with prudential requirements.

- **Article 7(3) of the CRR, on the waiver of requirements for parent institutions**

[8] Commission Implementing Regulation (EU) No 680/2014, Annex II, Part ii, paragraph 37.

For the purposes of assessing, under Article 7(3), whether a waiver should be granted to a parent institution in a Member State, the ECB intends to take into account, *mutatis mutandis*, the relevant[9] specifications mentioned above in relation to Article 7(1) of the CRR.

In addition to these specifications, in assessing the condition referred to in Article 7(3)(a) that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State, the ECB will take into account whether:

(i) the own funds held by subsidiaries located in the EEA are sufficient to grant the waiver to the parent (i.e. the granting of the waiver should not be justified on the basis of resources coming from third countries, unless official EU recognition of the equivalence of the third country is available and there are no other impediments);

(ii) the minority shareholders of the consolidating subsidiary do not together hold voting rights that would allow them to block an agreement, decision or act of the general meeting under the applicable national company law; and

(iii) foreign exchange restrictions, if any, do not prevent the prompt transfer of own funds or repayment of liabilities.

- **Documentation related to Article 7(1) and (3) CRR waivers**

- **Documentation related to Article 7(1) waivers**

For the purpose of the assessment(s) under Article 7(1) of the CRR, the credit institution is expected to submit the following documents, which the ECB will consider to be evidence that the conditions set out in the legislation have been satisfied:

(i) a letter signed by the parent undertaking's CEO, with approval from the management body, stating that the significant supervised group complies with all the conditions for granting the waiver(s) laid down in Article 7 of the CRR;

(ii) a legal opinion, issued either by an external independent third party or by an internal legal department, approved by the management body of the parent undertaking, demonstrating that there are no obstacles to the transfer of funds or repayment of liabilities by the parent undertaking resulting from either applicable legislative or regulatory acts (including fiscal legislation) or legally binding agreements

(iii) an internal assessment which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the institution in accordance

[9] For example, the criterion regarding "negligible interest" is excluded.

with Directive 2014/59/EU of the European Parliament and of the Council (BRRD);

(iv) evidence that the parent undertaking has guaranteed all the obligations of the subsidiary, by means, for example, of a copy of a signed guarantee or an extract from a public register certifying the existence of such guarantee or a declaration to such effect, which is reflected in the parent undertaking's articles of association or has been approved by the general meeting and reported in the annex to its consolidated financial statements. As an alternative to a guarantee, credit institutions can provide evidence that the risks in the subsidiary are negligible;

(v) the list of the entities for which the waiver is requested;

(vi) a description of the functioning of the financing arrangements to be used in case an institution faces financial difficulties, including information about how those arrangements ensure funds that are (a) available at will and (b) freely transferrable;

(vii) a statement signed by the CEOs and approved by the management bodies of the parent undertaking and the other institution(s) seeking the waiver, certifying that there are no practical impediments to the transfer of funds or the repayment of liabilities by the parent undertaking;

(viii) documentation approved by the management bodies of the parent undertaking and the other institution(s) seeking the waiver attesting that the risk evaluation, measurement and control procedures of the parent undertaking cover all the institutions included in the application;

(ix) a brief overview of the risk evaluation, measurement and control procedures of the parent institution, or, in the case of a horizontal group of institutions, of the consolidating institution, as well as information about the contractual basis, if any, upon which the risk management for the group as a whole can be controlled by the relevant steering entity;

(x) the structure of the voting rights attached to shares in the capital of the subsidiary;

(xi) any agreement that grants the parent undertaking the right to appoint or remove a majority of the members of the management body of the subsidiary.

- **Documentation related to Article 7(3) waivers**

Institutions applying for a waiver under Article 7(3) of the CRR must submit to the ECB (mutatis mutandis) the documents listed under points (i), (ii), (iv), (vi), (vii) and (viii) above. In the case of subsidiaries established in non-EEA countries, institutions must submit, in addition to those documents, written confirmation by the third country competent authority for the prudential supervision of such subsidiaries that there are

no practical impediments to the transfer of own funds or repayment of liabilities from the relevant subsidiary to the parent institution seeking the waiver.

4. LIQUIDITY WAIVERS (Article 8 of the CRR)

A similar approach is planned with regard to waiver of the liquidity requirements of a credit institution and all or some of its subsidiaries, both at the national as well as at the cross-border level, provided that the conditions specified in Article 8 of the CRR and Article 2(2) of Commission Delegated Regulation 2015/61 are met. However, the ECB plans to exclude reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of credit institutions which are in the same Member State as the parent company.

- **Waivers at the national level**

More specifically, in the event of an application for a waiver at the national level, the credit institution must fulfil the conditions set out in Article 8(1) and (2) of the CRR. To this end, the credit institution is expected to provide the following.

(1) With respect to the requirement laid down in Article 8(1)(a) that the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six of the CRR, the institution should provide:

(i) a calculation of the Liquidity Coverage Ratio (LCR) at the sub-group level, which demonstrates that the sub-group meets the LCR requirements applicable in the jurisdiction where the sub-group is established;

(ii) a phase-in convergence plan towards a 100% LCR requirement in 2018;

(iii) a liquidity position (last three reports) under the existing relevant national liquidity provisions, where applicable. Alternatively, if no quantitative requirements are in place, internal monitoring reports on the institution's liquidity position could be provided. A liquidity position would be considered to be sound if the consolidating institution has an adequate level of liquidity management and control (over the past two years). The credit institution would be expected to flag any obstacles to the free transfer of funds that may arise, either in normal or stressed market conditions, from national liquidity provisions;

(iv) the LCR of each entity of the sub-group, pursuant to Commission Delegated Regulation 2015/61, and the existing plans to meet the legal requirements should waivers not be granted.

(2) With respect to the condition set out in Article 8(1)(b) that the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group that are subject to the waiver and ensures a sufficient level of liquidity for all of these institutions, the institution should provide:

(i) the organisational chart of the liquidity management function within the sub-group showing the level of centralisation at the sub-group level;

(ii) a description of the processes, procedures and tools used for the internal monitoring of the entities' liquidity positions at all times and the extent to which they are designed at the sub-group level;

(iii) a description of the liquidity contingency plan for the liquidity sub-group.

(3) With respect to the condition laid down in Article 8(1)(c) that the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they come due, the institution should provide:

(i) the contracts concluded between entities which are part of the liquidity sub-group, which do not provide for any amount or any time-limit or which provide for a time-limit that exceeds the validity of the waiver decision by at least six months;

(ii) evidence that the free movement of funds and the ability to meet individual and joint obligations as they come due are not subject to any conditions that may prevent or limit their exercise, confirmed by a legal opinion to that effect either issued by an external independent third party or by an internal legal department, provided and approved by the management body;

(iii) evidence that, unless the waiver is revoked by the competent authority[10], the legal contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to a six-month notice period, with prior mandatory notice to the ECB.

(4) With regard to the condition laid down in Article 8(1)(d) of the CRR that there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in Article 8(c), the institution should provide:

(i) a legal opinion, either issued by an external independent third party or by an internal legal department, provided and approved by the management body, that supports the absence of legal impediments, e.g. with regard to national insolvency laws;

(ii) an internal assessment which concludes that there are no current or foreseen material practical or legal impediments to the fulfilment of the contract referred to above and which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the institution in

[10] The contract should include a clause providing that if the competent authority revokes the waiver the contract may be cancelled unilaterally with immediate effect.

accordance with Directive 2014/59/EU of the European Parliament and of the Council[11] (BRRD);

(iii) a confirmation from the relevant NCA that the national liquidity provisions, where applicable, do not contain material practical or legal impediments to the fulfilment of the contract.

- **Waivers at the cross-border level**

In the case of an application for a waiver under Article 8 with regard to institutions which are established in several Member States, the ECB will, in addition to the specifications mentioned above for granting a waiver at the national level, assess whether the following specifications have been met.

(1) To assess, in accordance with Article 8(3)(a), the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group, the ECB will verify that:

(i) the liquidity SREP does not reveal breaches at the time of application and over the previous three months and that the liquidity management of the institution as evaluated in the SREP is deemed to be of a high quality.

(2) With respect to Article 8(3)(b) and the distribution of amounts, and location and ownership of the required liquid assets to be held within the single liquidity sub-group, account will be taken of whether:

(i) significant sub-entities[12] or significant groups of sub-entities in one Member State maintain in that Member State an amount of high quality liquid assets (HQLA) which is at least equal to the lower of[13] (a) and (b):

(a) the percentage of HQLA required at the ultimate parent company level;

(b) 75% of the level of HQLA that would be required in order to comply with the fully phased-in LCR requirements at the solo or sub-consolidated level, in accordance with Commission Delegated Regulation (EU) 2015/61.

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11 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

12 This requirement applies to subsidiaries that meet at least one of the numerical thresholds specified in Articles 50, 56, 61 or 65 of the SSM Framework Regulation on a solo basis. If more than one subsidiary is established in a Member State but none of them meet these numerical thresholds at solo level, this condition should also apply if all entities established in that Member State, on the basis of either the consolidated position of the parent company in that Member State or the aggregated position of all subsidiaries that are subsidiaries of the same EU parent company and are established in said Member State, meet at least one of the numerical thresholds specified in Articles 50, 56, and 61 of the SSM Framework Regulation.

13 A higher lower bound can exceptionally be set by the ECB based on the specific risk features of the sub-entities in the subgroup and the group as a whole.

The computation of the percentage under points (a) and (b) above should not take into account any preferential treatment, in particular that available under Article 425(4)and (5) of the CRR and Article 34(1), (2) and (3) of Commission Delegated Regulation (EU) 2015/61.

The ECB intends to reassess the specifications under (b) above at the latest in 2018, in particular in order to set the lower bound at 50%, in light of supervisory experience and the development of the institutional mechanisms in place within the banking union to ensure the safety and freedom of cross-border intragroup liquidity flows.

(3) With respect to the assessment, under Article 8(3)(d) of the CRR, of the need for stricter parameters than those set out in Part Six of the CRR:

In the case of a waiver for an institution located in a participating Member State and a non-participating Member State, and in the absence of national provisions which set stricter parameters, the LCR requirement is the highest applicable level among the countries where the subsidiaries and the top consolidating entity are located, if allowed by national law.

(4) To assess whether there is a full understanding of the implications of such a waiver under Article 8(3)(f), the ECB will take into account:

(i) the existing back-up plans to meet legal requirements should waivers not be granted/cease to be granted.

(ii) a full assessment of the implications by the management body and by the competent authorities as required to be performed and submitted to the ECB.

- **Documentation for Article 8 of the CRR**

For the purpose of the assessment under Article 8 of the CRR, the credit institution is expected to submit the following documents, which the ECB considers to be evidence that the criteria set out in the legislation have been met:

(i) a cover letter signed by the bank's Chief Executive Officer (CEO), with approval from the management body stating that the bank complies with all the waiver criteria as set out in Article 8 of the CRR;

(ii) a description of the extent of the liquidity sub-group(s) to be constituted together with a list of all the entities that would be covered by the waiver;

(iii) a precise description of the requirements in respect of which the institution is asking for a waiver.

5. Institutional Protection Schemes (Article 8(4) of the CRR and Article 2(2) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to grant waivers to institutions which are members of the same IPS provided that all the conditions laid down in Article 113(7) of the CRR are fulfilled. Reporting requirements at individual sub-entity level are to be maintained.

For the purposes of this assessment, the relevant specifications and/or documents mentioned above under points 1-4 relating to waivers at national level will be applied.

As for the documents required, the credit institution must submit:

(i) proof of the valid grant of a power of attorney and a copy of the signature of the attorney appointed;

(ii) a legal contract that stipulates irrevocable control rights of the sub-consolidated entity against the waived entities within the liquidity risk framework.

6. INDIVIDUAL CONSOLIDATION METHOD (Article 9 of the CRR)

The ECB intends to use the individual consolidation method provided for in Article 9(1) of the CRR for subsidiaries of credit institutions in the same Member State whose material exposures, or material liabilities, are to the same parent institution. The ECB will conduct the relevant assessment on a case-by-case basis, based, among other aspects, on whether the sub-consolidated own funds are sufficient to ensure compliance by the institution on the basis of its stand-alone individual situation. For the purposes of this assessment, the criteria for granting the waiver set out in Article 7 of the CRR, as seen above, will also be taken into account, as appropriate and as provided for in Article 9(1) of the CRR.

7. WAIVERS FOR CREDIT INSTITUTIONS PERMANENTLY AFFILIATED TO A CENTRAL BODY (Article 10 of the CRR)

The ECB will grant a waiver both to institutions affiliated to a central body and to the central body itself, provided that the conditions of Article 10 of the CRR are fulfilled.

For the purpose of assessing whether to grant a waiver to the affiliates in accordance with Article 10(1) of the CRR, the ECB will take into account whether the following criteria, specifying the conditions of the legislative framework, have been met.

(1) To assess compliance with the requirement laid down in Article 10(1)(a) that the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body, account will be taken of whether:

(i) funds can be transferred or liabilities can be repaid from one network member to another swiftly and the method for the transfer or repayment is sufficiently simple;

(ii) there are indications from the past regarding the flow of funds between network members which demonstrate an ability to make prompt transfers of funds or repayments of liabilities;

(iii) the by-laws of the network members or any shareholders' agreements, or any other known agreements, do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities;

(iv) the joint risk-absorbing capacity of the central body and affiliated institutions is sufficient to cover expected and unexpected losses of the members.

(2) To assess compliance with the requirement laid down in Article 10(1)(b) that the solvency and the liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of their consolidated accounts, the ECB will verify that:

(i) the COREP "Group Solvency" template, which aims to provide a global view on how the risks and the own funds are distributed within the group, shows no discrepancy in this regard;

(ii) the central body and the affiliated institutions are compliant with the requirements set out in the CRR, including reporting, on a consolidated basis.

(3) To assess compliance with the requirement laid down in Article 10(1)(c) that the management of the central body is empowered to issue instructions to the management of the affiliated institutions, the ECB will take into account whether:

(i) these instructions ensure that the affiliated institutions comply with the requirements of the legislation and of the by-laws with a view to safeguarding the soundness of the group;

(ii) the instructions that the central body can issue cover at least the objectives listed in the CEBS Guidelines issued on 18 November 2010.

For the purpose of the ECB's assessment with regard to granting a waiver to the central body in accordance with Article 10(2) of the CRR, the credit institution is expected to submit the documents mentioned above to demonstrate that the conditions of Article 10(1) of the CRR have been met.

In addition to these, and for the purpose of assessing the second condition referred to in Article 10(2), the institution is expected to submit evidence that the liabilities or commitments of the central body are entirely guaranteed by the affiliated institutions. A copy of a signed guarantee or reference to a public register certifying such a guarantee or a declaration to that effect, which is reflected in the affiliated institution's by-laws or approved by the general meeting and mentioned in the annex to the financial statements, are examples of such evidence.

8. EXCLUSION OF CONSOLIDATION (Article 19(2) of the CRR)

Finally, the ECB is of the view that exclusion of undertakings from consolidation, within the context of Article 19(2) of the CRR, should only be allowed in cases permitted both by the CRR and consistently with the Basel Committee standards, i.e.:

(i) as regards majority-owned or majority-controlled entities, only for entities that are subject to the CRR, or to comparable robust prudential requirements, and only in cases compatible with both Article 19(2) of the CRR and paragraph 26 of Basel II[14];

(ii) as regards minority investments, for all cases listed in Article 19(2)(a) to (c) of the CRR.

Chapter 2
Own funds

1. This Chapter sets out the ECB's policy regarding the definition and calculation of own funds.

2. Part Two of the CRR, as well as Commission Delegated Regulation (EU) No 241/2014[15], set out the relevant legislative and regulatory framework.

3. DEFINITION OF MUTUALS (Article 27(1)(a) of the CRR)

The ECB considers that an institution qualifies as a mutual within the meaning of Article 27(1)(a)(i) of the CRR provided that it is defined as such under national law and according to the specific criteria of Commission Delegated Regulation (EU) No 241/2014.

4. DEDUCTION OF INSURANCE HOLDINGS (Article 49(1) of the CRR)

With regard to the non-deduction of holdings within the context of Article 49(1) of the CRR, significant credit institutions can expect the following treatment:

[14] According to paragraph 26 of International Convergence of Capital Measurement and Capital Standards by the Basel Committee on Banking Supervision ("Basel II"): "There may be instances where it is not feasible or desirable to consolidate certain securities or other regulated financial entities. This would be only in cases where such holdings are acquired through debt previously contracted and held on a temporary basis, are subject to different regulation, or where non-consolidation for regulatory capital purposes is otherwise required by law. In such cases, it is imperative for the bank supervisor to obtain sufficient information from supervisors responsible for such entities."

[15] Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

(i) in cases where permission for non-deduction has already been granted by the national competent authority prior to 4 November 2014, the credit institutions may continue to not deduct the relevant holdings on the basis of that permission provided that appropriate disclosure requirements are met;

(ii) in cases where the credit institution plans to submit a request to the ECB for such permission, the ECB will grant permission provided that the CRR criteria and appropriate disclosure requirements are met.

5. DEDUCTION OF HOLDINGS OF FINANCIAL SECTOR ENTITIES (Article 49(2) of the CRR)

The ECB considers the deduction of holdings of own-funds instruments issued by financial sector entities included in the scope of consolidated supervision in accordance with Article 49(2) of the CRR to be necessary in specific cases and, in particular, in cases of structural separation and resolution planning.

6. DEDUCTION OF HOLDINGS IN THE PRESENCE OF INSTITUTIONAL PROTECTION SCHEMES (IPS) (Article 49(3) of the CRR)

The ECB intends to permit institutions, on a case by case basis, to not deduct holdings of own funds instruments in other institutions falling within the same protection scheme for the purposes of calculating own funds on an individual or sub-consolidated basis, provided that the conditions set out in Article 49(3) of the CRR are fulfilled. For the purpose of this assessment the ECB will take into account whether the following criteria, specifying the conditions of the legal framework, have been met:

(1) Article 49(3)(a)(iv) of the CRR requires the equivalence of the extended aggregated calculation of an IPS with the provisions of Directive 86/635/EEC governing the consolidated accounts of groups of credit institutions to be shown. The calculation must be verified by an external auditor and the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme must be eliminated from the calculation.

(i) The external auditor who is responsible for the audit of the extended aggregated calculation must confirm annually that:

(a) the aggregation method ensures that all intragroup exposures are eliminated;

(b) the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme has been eliminated;

(c) no other transactions by the members of the IPS have led to an inappropriate creation of own funds at the consolidated level.

(2) Under Article 49(3)(a)(iv) of the CRR it is required that the consolidated balance sheet or the extended aggregated calculation of the IPS shall be reported to the competent authorities no less frequently than the frequency laid down in Article 99 of the CRR. The following reporting standards must be adhered to.

(i) Information on the consolidated balance sheet or the extended aggregated calculation must be reported at least on a semi-annual basis.

(ii) The information on the consolidated balance sheet or the extended aggregated calculation must comply with Regulation (EU) 2015/534 (ECB/2015/13)[16] as follows:

(a) IPS that draw up a consolidated balance sheet applying IFRS must report full FINREP.

(b) All other IPS must provide supervisory financial reporting data points (Annex IV to Regulation (EU) 2015/534 (ECB/2015/13)). The IPS must only report financial reporting data points that have to be reported by all IPS member institutions on an individual basis.

(iii) For IPS that were granted the permission according to Article 49(3) CRR before the approval of this policy the first reference date for reporting in accordance with the reporting requirements defined in this paragraph shall be 30 June 2017. Until then the IPS should continue to report financial data according to the current reporting requirements defined by the competent authorities.

(3) Article 49(3)(a)(v) of the CRR requires that the institutions included in an IPS meet together on a consolidated or extended aggregated basis the own funds requirements laid down in Article 92 of the CRR and carry out reporting of compliance with those requirements in accordance with Article 99 of the CRR. The ECB will consider the following factors in assessing compliance with this criterion:

(i) all intragroup exposures and participations between IPS members must be eliminated within the consolidation/aggregation;

(ii) the data provided by the IPS member institutions must be based on the same accounting standards, or an adequate transformation calculation must be conducted;

(iii) the entity responsible for the preparation of the consolidated reports on own funds must perform adequate quality assurance on the data provided

[16] Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information (ECB/2015/13) (OJ L 86, 31.3.2015, p. 13).

by the IPS member institutions and review at regular intervals its own IT systems that are used to prepare the consolidated reporting;

(iv) the minimum frequency of the reporting must be on a quarterly basis;

(v) the reporting must use the COREP templates set out in Annex I of Commission Implementing Regulation (EU) No 680/2014. The reporting on own funds and own funds requirements on an extended aggregated basis must be based on the individual reports on own funds and own funds requirements of the IPS member institutions.

(vi) For IPS that were granted the permission according to Article 49(3) CRR before the entry into force of this OND Guide and that have not yet been required to provide COREP templates with the envisaged frequency, the first reference date for reporting in accordance with the reporting requirements defined in this paragraph shall be 30 June 2017.

(4) In determining for the purposes of Article 49(3)(a)(v) of the CRR whether within an IPS the deduction of the interest owned by cooperative members or legal entities which are not members of the IPS is required, the ECB will not require such deduction provided that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the IPS and the minority shareholder, when it is an institution, is eliminated. The ECB will take into account:

(i) the extent to which minority interests that are held by institutions which are not members of the IPS are included within the calculation of own funds at the consolidated/aggregated level;

(ii) whether the minority interests are implicitly included in the total own funds of the institutions that own the minority interests;

(iii) whether the IPS applies Articles 84, 85 and 86 of the CRR when calculating the own funds on a consolidated/extended aggregated basis regarding the minority interests that are held by institutions which are not IPS members.

7. REDUCTION OF OWN FUNDS: EXCESS CAPITAL MARGIN REQUIREMENT (Article 78(1)(b) of the CRR)

The ECB intends to determine the excess margin required in Article 78(1)(b) of the CRR for the purpose of reduction of own funds, provided that the conditions of Article 78(1) are met and after assessing both of the following factors:

(i) whether the institution continues to meet the capital requirements set out in the applicable SREP decision after the reduction of own funds;

(ii) the impact of the planned reduction on the relevant tier of own funds.

8. REDUCTION OF OWN FUNDS: MUTUALS, SAVINGS, COOPERATIVES (Article 78(3) of the CRR)

With regard to instruments issued by mutuals, savings, cooperatives and similar institutions under Article 27 and 29 of the CRR, the ECB intends to grant the waiver provided for in Article 78(3) of the CRR on a case-by-case basis and provided that the conditions set out in Articles 10 and 11 of Commission Delegated Regulation (EU) No 241/2014 are met. In particular, it will take into account the following aspects:

(i) whether the institution has both the right to defer the redemption and to limit the amount to be redeemed;

(ii) whether the institution has these rights for an unlimited period of time;

(iii) whether the institution determines the extent of the limitations on the basis of its prudential situation at any time having regard to (a) its overall financial, liquidity and solvency situation and (b) the amount of Common Equity Tier 1 capital, Tier 1 capital and total capital compared to the total risk exposure amount, the specific own-funds requirements and the combined buffer requirements, as applicable to the institution.

The ECB may further limit the redemption beyond the legislative or contractual limitations.

9. TEMPORARY WAIVER OF THE DEDUCTION OF CAPITAL INSTRUMENTS FROM OWN FUNDS IN A FINANCIAL ASSISTANCE OPERATION (Article 79(1) of the CRR)

The ECB considers that the deduction of capital instruments provided for in Article 79(1) of the CRR for the purpose of facilitating a financial assistance operation can be temporarily waived, in accordance with the conditions specified in Article 79(1) of the CRR, as well as the conditions specified in Article 33 of Commission Delegated Regulation (EU) No 241/2014.

10. WAIVER FOR ADDITIONAL TIER 1 AND TIER 2 INTSTRUMENTS ISSUED BY A SPECIAL PURPOSE ENTITY (Article 83(1) of the CRR)

The ECB intends to grant the waiver provided for in Article 83(1) of the CRR for the purpose of including Additional Tier 1 and Tier 2 instruments issued by a special purpose entity (SPE) in the qualifying Additional Tier 1 or Tier 2 capital of a credit institution in accordance with the conditions specified therein, as well as the conditions specified in Article 34 of Commission Delegated Regulation (EU) No 241/2014. The ECB will grant this waiver when the other assets owned by the SPE are minimal and insignificant.

11. MINORITY INTERESTS INCLUDED IN CONSOLIDATED COMMON EQUITY TIER 1 CAPITAL (Article 84 of the CRR)

The ECB would consider it appropriate to apply Article 84(1) of the CRR to a parent financial holding company of a credit institution, in order to ensure that only that part of the consolidated own funds that is promptly available to cover losses at the parent level is included in the regulatory capital.

Chapter 3
Capital requirements

1. This chapter sets out the ECB's policy on capital requirements.

2. Part Three of the CRR, as well as the relevant EBA Guidelines, set out the relevant legislative and regulatory framework.

3. EXPOSURES IN THE FORM OF COVERED BONDS (Article 129 of the CRR)

   For the purposes of Article 129(1)(c) of the CRR, the ECB intends to allow covered bond collateral in the form of exposures to banks to account for up to 10% of the nominal value of quality step 2 exposures, instead of quality step 1 exposures, provided that in the specific case the condition specified in the third sub-paragraph of Article 129(1) is met.

4. MATURITY OF EXPOSURES (Article 162 of the CRR)

   Where institutions have not received permission to use their own loss given default (LGD) and conversion factors for exposures to corporates, institutions or central governments and central banks, the ECB considers that it is appropriate to require the use of the maturity value (M) as defined in the first sub-paragraph of Article 162(1) of the CRR, and not to allow the use of the maturity set out in Article 162(2).

5. COLLECTION OF DATA (Article 179 of the CRR)

   For the purposes of the last sentence of the second sub-paragraph of Article 179(1) of the CRR, the ECB intends to allow credit institutions some flexibility in the application of the required standards for data collected prior to 1 January 2007, provided that institutions have made the appropriate adjustments to achieve broad equivalence with the definition of default laid down in Article 178 of the CRR or with the definition of loss laid down in Article 5 (2) of the CRR.

6. OWN ESTIMATE OF VOLATILITY ADJUSTMENTS (Article 225(2)(e) of the CRR)

   For the purposes of Article 225(2)(e) of the CRR, the ECB is of the view that it is only appropriate to maintain the requirements set in order for the credit institution to use a shorter observation period for the purpose of the calculation of volatility adjustments

in cases where such requirements are in place according to national law before the final publication of this Guide.

7. SIGNIFICANT RISK TRANSFER (Articles 243(2) and 244(2) of the CRR)

The ECB may consider it necessary to depart from the general assumption that significant credit risk is transferred in the two cases defined in Articles 243(2) and 244(2) of the CRR, on traditional and synthetic securitisation respectively, on a case-by-case basis and following the EBA Guidelines on significant risk transfer, issued on 7 July 2014.

8. IMPLEMENTATION OF THE INTERNAL MODEL METHOD (Article 283(3) of the CRR)

The ECB intends to permit institutions to implement for a limited period the Internal Model Method (IMM), pursuant to Article 283(3) of the CRR, sequentially across different transaction types following a case-by-case assessment.

For the purpose of this assessment, the ECB plans to take into account whether:

(i) the initial coverage at the time of approval comprises “plain vanilla” interest rate and FX derivatives and covers 50% of both the risk-weighted assets (RWA) (as calculated with exposures based on the chosen non-IMM method in accordance with Article 271(1) of the CRR) and the number of trades (i.e. legal transactions, no single legs);

(ii) a coverage of more than 65% in terms of RWA (based on either IMM or non-IMM methods, depending on the trade) and more than 70% in terms of the number of trades (legal transactions, no single legs) relative to total counterparty credit risk (CCR) is achieved within three years;

(iii) if a larger than 35% (RWA) or 30% (number of trades) portion remains outside the IMM after the three-year period, the credit institution would be expected to prove that either the remaining transaction types cannot be modelled owing to missing calibration data, or that the standardised approach (STA) exposures used are sufficiently conservative.

9. CALCULATION OF THE EXPOSURE VALUE FOR COUNTERPARTY CREDIT RISK (Article 284(4) and (9) of the CRR)

The ECB intends to assess the necessity of requiring a higher α factor than 1.4 for the purpose of calculating the exposure value pursuant to Article 284(4) of the CRR, on a case-by-case basis depending on model deficits or model risk. Moreover, it considers that, for prudential purposes, α should in principle be the value stipulated in the said paragraph.

10. TREATMENT OF EXPOSURES TO CENTRAL COUNTERPARTIES (Article 310 and Article 311(3) of the CRR)

The ECB intends to permit credit institutions to apply the treatment set out in Article 310 of the CRR to their trade exposures and default fund contributions to a central counterparty (CCP), in the event that the CCP has ceased to meet the conditions provided for in Article 311(2) of the CRR. The ECB may review this policy after the final standards of the Basel Committee take effect on 17 January 2017.

Moreover, the ECB considers it appropriate that the period given to institutions to change the treatment of exposures to a CCP pursuant to Article 311(3) of the CRR, when it becomes known that such CCP will no longer comply with the conditions for authorisation and recognition, should not exceed three months.

11. CALCULATION OF THE VALUE-AT-RISK NUMBER (Article 366(4) of the CRR)

The ECB is of the view that the calculation of the addend for the purpose of calculating the capital requirement referred to in Articles 364 and 365 of the CRR should be based on hypothetical and actual changes in the portfolio value, according to the specifications set out in Article 366(3).

Chapter 4
Large exposures

1. This chapter sets out the ECB's policy on the treatment of large exposures.

2. Part Four of the CRR sets out the relevant legislative framework.

3. COMPLIANCE WITH THE LARGE EXPOSURES REQUIREMENTS (Articles 395 and 396 of the CRR)

Where, in exceptional cases, the exposures of credit institutions exceed the limit set in Article 395(1) of the CRR, the ECB intends to allow a limited period of time in which to comply with the limit, pursuant to Article 396(1).

For the purpose of this assessment, the ECB would more specifically examine whether immediate rectification is viable or not. In the event that such rectification is not viable, the ECB would consider it appropriate to set a time limit by which a rapid rectification would be required. In addition, the credit institution would be expected to show that the breach of the limit did not result from the usual policy of entering into ordinary credit risk exposures. However, even in these exceptional cases referred to in Article 396(1), the ECB does not consider it appropriate to allow the exposure to exceed 100% of the eligible capital of the credit institution.

Chapter 5
Liquidity

1. This chapter sets out the ECB's policy on compliance with liquidity requirements and liquidity reporting requirements.

2. The legislative framework for liquidity requirements and reporting requirements is set out in Part Six of the CRR and Commission Delegated Regulation (EU) 2015/61, which provides for the liquidity coverage ratio (LCR) applicable in the EU, as well as specifying the conditions for establishing a liquidity buffer and calculating liquidity outflows and inflows. This Regulation became applicable on 1 October 2015.

3. COMPLIANCE WITH LIQUIDITY REQUIREMENTS (Article 414 of the CRR)

   The ECB intends to authorise, on a case-by-case basis, lower reporting frequencies (than daily) and longer reporting delays (than by the end of each business day) where an institution does not meet, or expects not to meet, the general obligation set out in Article 413(1) of the CRR in times of stress, according to the conditions stipulated in Article 414 of the CRR, with regard to the stable funding requirements. However the ECB does not intend to authorise lower reporting frequencies (than daily) and longer reporting delays (than by the end of each business day) where a credit institution does not meet, or expects not to meet, the liquidity coverage requirement set out in Article 412(1) of the CRR or in the LCR Regulation).

   The ECB observes that, in general, credit institutions are expected to comply with the reporting requirements for the LCR and the stable funding requirements at all times. In addition to these requirements, the ECB would consider imposing additional reporting requirements on significant credit institutions pursuant to Article 16(2)(j) of the SSM Regulation in the event of a liquidity crisis.

4. INTRAGROUP LIQUIDITY OUTFLOWS (Article 29 of Commission Delegated Regulation (EU) 2015/61)

   The ECB considers that differentiated treatment, pursuant to Article 422 of the CRR and Article 29 of Commission Delegated Regulation (EU) 2015/61, can be applied to intragroup outflows of credit institutions, following a case-by-case assessment. More specifically, such treatment can be applied for outflows of credit and liquidity facilities only under Article 29 of Commission Delegated Regulation (EU) 2015/61, in cases where waivers of Article 8 or 10 of the CRR were not granted or were partially granted. This policy applies both for institutions established within the same Member State and for institutions established in different Member States.

   For the purpose of the assessment pursuant to Article 422(8) of the CRR and Article 29(1) of Commission Delegated Regulation (EU) 2015/61 with regard to institutions established in the same Member State, the ECB will take into account whether the

following criteria, which specify the conditions of the applicable legal framework, are met:

(i) in order to assess whether there are reasons to expect a lower outflow over the next 30 days even under a combined idiosyncratic and market-wide stress scenario, the ECB expects to be shown that cancellation clauses for the contract include a notification period of at least six months;

(ii) when a lower outflow rate applies to credit or liquidity facilities, in order to assess whether a corresponding symmetric or more conservative inflow is applied by the facility receiver, the ECB expects to be shown that the inflow that could potentially arise from the relevant facility is properly taken into account in the contingency funding plan of the facility-receiving institution;

(iii) in the event of the application of Article 422(8) of the CRR, when a lower outflow rate applies to deposits, in order to assess whether a corresponding symmetric or more conservative inflow is applied by the depositor, the ECB expects to be shown that the corresponding deposits are not taken into account in the liquidity recovery plan of the liquidity-providing entity, for the purpose of applying Article 422 of the CRR.

For the purpose of this assessment pursuant to Article 422(9) of the CRR and Article 29(1) and (2) of Commission Delegated Regulation (EU) 2015/61 with regard to institutions established in different Member States, the ECB will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

(i) In order to assess whether the liquidity-providing entity and liquidity-receiving entity have a low liquidity risk profile, the credit institutions are expected to demonstrate that they would meet their LCR. An institution benefiting from preferential treatment should provide an alternative compliance plan to demonstrate how it intends to meet its fully phased-in LCR in 2018, if the preferential treatment were not to be granted.

(ii) For the same purpose, the credit institutions are expected to show that both the liquidity provider and the liquidity receiver exhibit a sound liquidity profile. More specifically:

(a) in cases where the LCR has been applicable under the legislation in place, the credit institutions are expected to demonstrate that they have been fulfilling their LCR on an individual and a consolidated basis, when applicable, for at least one year and that the credit institution benefiting from preferential treatment reflects the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR;

(b) alternatively, if the liquidity coverage requirement has not been in place for a full year and where national liquidity requirements are in

place, the credit institutions are expected to demonstrate that they have been fulfilling their liquidity requirements on an individual and a consolidated basis, when applicable, for at least one year.

Alternatively, where past LCR reports are not available, or where no quantitative liquidity requirements are in place, a sound liquidity position would be considered to have been achieved, if the liquidity management of both institutions as evaluated in the SREP is deemed to be of high quality.

In all cases, data from the Short-Term Exercise could be used to complement the analysis.

(iii) The ECB expects to be shown that any application for preferential treatment is supported by a reasoned and formalised decision of the management bodies of both the liquidity-providing entity and the liquidity-receiving entity, ensuring that they fully understand the implications of the preferential treatment in the event that it is granted and that cancellation clauses include a notification period of at least six months.

(iv) In order to assess whether the liquidity risk profile of the liquidity receiver is adequately taken into account in the liquidity risk management of the liquidity provider, the ECB expects to be shown that the liquidity-providing entity monitors on a regular basis the liquidity position of the counterparty, including its daily liquidity position. This could be achieved, where appropriate, by granting access for the counterparty to regular monitoring systems, including daily monitoring systems, established by the liquidity-receiving entity and the liquidity-providing entity on a consolidated and individual basis.

Alternatively, the credit institutions are expected to demonstrate how the appropriate information on the liquidity positions of the entities involved is made available to the parties on a regular basis – for instance, by sharing daily liquidity monitoring reports.

5. INTRAGROUP LIQUIDITY INFLOWS (Article 34 of Commission Delegated Regulation (EU) 2015/61)

The ECB would also allow for differentiated treatment with regard to inflows within a group, according to the conditions set out in Article 425 of the CRR and Article 34 of Commission Delegated Regulation (EU) 2015/61, after a case-by-case assessment. This approach would be considered for inflows of credit and liquidity facilities, in cases where waivers of Article 8 or 10 of the CRR were not granted or were partially granted, with regard to the LCR. This policy applies both for institutions established within the same Member State and for institutions established in different Member States.

For the purpose of this assessment pursuant to Article 425(4) of the CRR and Article 34(1) of Commission Delegated Regulation (EU) 2015/61, with regard to institutions

established in the same Member State, the ECB will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

(i) In order to assess whether there are reasons to expect a higher inflow even under a combined idiosyncratic and market-wide stress scenario, the ECB expects to be shown that cancellation clauses include a notification period of at least six months and that the agreements and commitments do not contain any clause that would allow the liquidity provider to:

  (a) require any conditions to be fulfilled before the liquidity is provided;

  (b) withdraw from its obligations to fulfil these agreements and commitments;

  (c) change substantially the terms of the agreements and commitments without prior approval from the competent authorities involved.

(ii) In order to assess whether a corresponding symmetric or more conservative outflow is applied by the counterparty by way of derogation from Articles 422, 423 and 424 of the CRR, the ECB expects to be shown that the corresponding outflows from the credit or liquidity facility are taken into account in the liquidity recovery plan of the liquidity-providing entity.

(iii) In order to assess whether the liquidity-providing entity exhibits a sound liquidity profile, the credit institution is expected to demonstrate that the following criteria are met.

  (a) Where the LCR is already applicable under the existing legislation, that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year. The liquidity-receiving institution is expected to reflect the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR.

  (b) Where national liquidity requirements are in place, that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year.

  Alternatively, if past LCR reports are not available or no quantitative liquidity requirements are in place, a sound liquidity position should be considered to have been achieved if the liquidity management of the institution as evaluated in the SREP is deemed to be of high quality.

  In all cases, data from the Short-Term Exercise could be used to complement the analysis.

For decisions concerning institutions established in different Member States, the ECB's assessment will be carried out pursuant to Article 425(5) of the CRR and Article 34(1)(2) and (3) of Commission Delegated Regulation (EU) 2015/61.

For the purpose of this assessment, the ECB will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

(i) In order to assess whether there are reasons to expect a higher inflow even under a combined idiosyncratic and market-wide stress scenario, the ECB expects to be shown that cancellation clauses include a notification period of at least six months and that the agreements and commitments do not contain any clause that would allow the liquidity-providing entity to:

  (a) require any conditions to be fulfilled before the liquidity is provided;

  (b) withdraw from its obligations to fulfil these agreements and commitments;

  (c) change substantially the terms of the agreements and commitments without prior approval from the competent authorities involved.

(ii) In order to assess whether the liquidity-providing entity and liquidity-receiving entity present a low-risk liquidity profile, both institutions are expected to be able to demonstrate that they would meet their LCR. An institution benefiting from preferential treatment is expected to provide an alternative compliance plan to demonstrate how it intends to meet its fully phased-in LCR in 2018 if the preferential treatment were not to be granted. In addition, in order to assess whether the liquidity-providing entity and liquidity-receiving entity exhibit a sound liquidity profile, the credit institutions are expected to demonstrate the following.

  (a) Where the LCR is already applicable under the existing legislation, that they have been fulfilling their LCR on an individual and a consolidated basis, when applicable, for at least one year. The liquidity-receiving institution is expected to reflect the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR.

  (b) Where national liquidity requirements are in place, that they have been fulfilling their LCR on an individual and a consolidated basis, when applicable, for at least one year.

  Alternatively, where past LCR reports are not available or where no quantitative liquidity requirements are in place, a sound liquidity position could be considered to have been achieved if the liquidity management of both institutions as evaluated in the SREP is deemed to be of high quality. In all cases, data from the Short-Term Exercise could be used to complement the analysis.

(iii) In order to assess whether there are legally binding agreements and commitments between the group entities regarding the undrawn credit or liquidity line, the ECB expects to be shown that any application for preferential treatment is supported by a reasoned and formalised decision

of the management body of both the liquidity-providing entity and the liquidity-receiving entity, ensuring that they fully understand the implications of the preferential treatment in the event that it is granted and that cancellation clauses include a notification period of at least six months.

(iv) In order to assess whether the liquidity risk profile of the liquidity-receiving entity is taken into account adequately in the liquidity risk management of the liquidity-providing entity, the ECB expects to be shown that the liquidity-providing entity and the liquidity-receiving entity monitor on a regular basis the liquidity position of the counterparty, including its daily position. This could be achieved, where appropriate, via an access to monitoring systems, including daily monitoring systems, established by the liquidity-receiving entity and the liquidity-providing entity on an individual and a consolidated basis. Alternatively, the institutions are expected to demonstrate to the ECB how the appropriate information on the liquidity positions of the institutions involved is made available to the parties on a regular basis, for instance by sharing daily liquidity monitoring reports.

6. DIVERSIFICATION OF HOLDINGS OF LIQUID ASSETS (Article 8(1) of Regulation 2015/61)

The ECB intends to impose restrictions or requirements on credit institutions for the purpose of diversifying their holdings of liquid assets, as specified in Article 8(1) of Commission Delegated Regulation (EU) 2015/61, on a case-by-case basis. Within this context, the ECB will assess, in each individual case, the concentration thresholds by asset class and will, in particular, focus on covered bonds, if on aggregate they represent more than 60% of the total amount of liquid assets net of applicable haircuts.

For institutions where covered bonds represent on aggregate more than 60% of the total amount of liquid assets net of applicable haircuts, a diversification requirement should be duly considered in the SREP, and possibly implemented via a SREP decision, to be revised annually.

7. MANAGEMENT OF LIQUID ASSETS (Article 8(3) of Regulation 2015/61)

According to Article 8(3)(c) of Commission Delegated Regulation (EU) 2015/61, the ECB intends to permit credit institutions to combine the approaches provided for in Article 8(3)(a) and (b) of that Regulation, on a consolidated basis or at the level of the liquidity sub-group, where a liquidity waiver has been granted at the individual level in accordance with Article 8 of the CRR. Institutions can also be allowed to combine both approaches at individual level, provided that they can explain why the combined approach is needed.

8. CURRENCY MISMATCHES (Article 8(6) of Regulation 2015/61)

The ECB may impose a limit on net liquidity outflows addressing currency mismatches in accordance with Article 8(6) of Commission Delegated Regulation (EU) 2015/61. For the assessment in such a case, the ECB will take into account whether at least one of the following factors is met:

(i) the credit institution has reported positions in a significant currency (as defined in Article 415.2.a) of the CRR) which is not freely convertible and/or for which restrictions on the free movement of capital apply, and for which the institution is not allowed to perfectly hedge its foreign exchange risk;

(ii) the credit institution reports the liquidity outflows denominated in significant currencies as defined in Article 415.2.a) of the CRR.

9. HAIRCUTS ON EXTREMELY HIGH QUALITY COVERED BONDS (Article 10(2) of Regulation 2015/61)

Taking into account the existing empirical data, the ECB does not intend to impose haircuts exceeding 7% on covered bonds of extremely high quality referred to in Article 10(1)(f) of Commission Delegated Regulation (EU) 2015/61.

10. MULTIPLIER FOR RETAIL DEPOSITS COVERED BY A DEPOSIT GUARANTEE SCHEME (Article 24(6) of Regulation 2015/61)

The ECB intends to authorise a credit institution to multiply by 3% the amount of deposits covered by a deposit guarantee scheme in a third country at the consolidated level, pursuant to Article 24(6) of Commission Delegated Regulation (EU) 2015/61, provided that the credit institution can show that:

(i) the deposit guarantee scheme in the third country is equivalent to the schemes listed in Article 24(1) of Commission Delegated Regulation (EU) 2015/61 and meets the conditions listed in Article 24(4) a) to c) of Commission Delegated Regulation (EU) 2015/61 or those defined in paragraph 78 of the Basel Committee standard[17].

11. HIGHER OUTFLOW RATES (Article 25(3) of Regulation 2015/61)

The ECB intends to impose supervisory outflow rates pursuant to Article 25(3) of Commission Delegated Regulation (EU) 2015/61, especially in cases where:

(i) empirical evidence shows that the actual outflow rate observed for certain retail deposits is higher than those set out in that Regulation for riskier retail deposits;

(ii) certain institutions develop aggressive marketing policies that present a risk for their liquidity position, as well as a systemic risk, in particular to the

[17] http://www.bis.org/publ/bcbs238.pdf

extent that they can trigger a change in market practices regarding riskier forms of deposits.

12. OUTFLOWS WITH INTERDEPENDENT INFLOWS (Article 26 of Regulation 2015/61)

The ECB intends to allow institutions with interdependent inflows to calculate the corresponding outflows net of the interdependent inflows pursuant to Article 26 of Commission Delegated Regulation (EU) 2015/61 and provided that the following criteria, which specify the conditions of the legislative framework, are met.

(i) Interdependent inflows and outflows are not subject to a judgement or discretionary decision of the reporting credit institution.

(ii) The interdependent inflow is not captured otherwise in the LCR of the institution, in order to avoid double-counting.

(iii) Evidence of this legal, regulatory or contractual commitment is provided by the institution.

(iv) When Article 26(c)(i) applies, interdependent inflows and outflows may arise during the same day, but due consideration should be given to delays in payment systems that could prevent the condition in Article 26 (c)(i) from being met, and to interdependent inflows and outflows pursuant to Article 26(c)(ii).

(v) When Article 26(c)(ii) applies, the State guarantee is clearly defined in the applicable legal, regulatory or contractual framework, as well as the timing of the inflows. Existing payment practices are not considered to be sufficient to fulfil this condition.

13. SPECIALISED CREDIT INSTITUTIONS (Article 33(3)(4) and (5) of Regulation 2015/61)

Finally, the ECB considers it appropriate that specialised credit institutions should have differentiated treatment for the recognition of their inflows under the conditions specified in Article 33(3)(4) and (5) of Commission Delegated Regulation (EU) 2015/61.

More specifically:

(i) credit institutions whose main activities are leasing and factoring can be fully exempted from the cap on inflows.

(ii) credit institutions whose main activities are financing for the acquisition of motor vehicles and consumer credit as defined in Directive 2008/48/EC of

the European Parliament and of the Council[18] may apply a higher cap of 90% on inflows.

The ECB considers that only credit institutions with a business model that fully corresponds to one or several of the activities identified in Article 33(3) and (4) of Commission Delegated Regulation (EU) 2015/61 can expect preferential treatment.

For the purpose of this assessment, the ECB would also examine whether the business activities exhibit a low liquidity-risk profile, taking into account the following factors.

(i) The timing of inflows should match the timing of outflows. More specifically, the ECB would examine whether the following apply.

(a) Inflows and outflows subject to the cap exemption or to a 90% cap are triggered by a single decision or set of decisions by a given number of counterparties and are not subject to a judgement or discretionary decision of the reporting credit institution.

(b) Inflows and outflows subject to the exemption are related to a legal, regulatory or contractual commitment. This commitment has to be evidenced by the applicant credit institution. In the event that the exempted inflow arises from a contractual commitment, the credit institution is expected to show that this commitment has a residual validity exceeding 30 days. Alternatively, when the business activity does not make it possible to show a relationship between inflows and outflows on a transaction-by-transaction basis, the applicant institutions should provide maturity ladders showing the respective timing of inflows and outflows over a period of 30 days for a total period covering at least one year.

(ii) At the individual level, the credit institution is not significantly financed by retail deposits. More specifically, the ECB would examine whether deposits from retail depositors exceed 5% of its total liabilities, and whether at the individual level the ratio of the main activities of the institution exceeds 80% of the total balance sheet. In cases where at the individual level institutions have diversified business activities which include one or several of the activities identified in Article 33(3) or (4) of Commission Delegated Regulation (EU) 2015/61, only inflows corresponding to activities under Article 33(4) are considered to be subject to the 90% cap. Within this context, the ECB would also examine whether the institution's activities under Article 33(3) and (4), jointly examined, exceed 80% of the total balance sheet of the institution at the individual level. The institution is expected to demonstrate that it has an appropriate reporting system to precisely identify these inflows and outflows on a continuous basis.

[18] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

(iii) The derogations are disclosed in annual reports.

In addition, the ECB would examine whether, at the consolidated level, inflows exempt from the cap are higher than outflows arising from the same specialised lending institution and cannot cover any other types of outflow.

Chapter 6
Transitional provisions on capital requirements and reporting

1. This chapter sets out the ECB's policy on the transitional provisions in the CRR.

2. The legislative provisions concerning the transitional arrangements for prudential requirements are set out in Part Ten of the CRR.

3. OWN FUNDS REQUIREMENTS FOR COVERED BONDS (Article 496(1) of the CRR)

The ECB intends to waive until 31 December 2017 the 10% limit for senior units issued by French Fonds Communs de Créances and equivalent securitisation entities, provided that both of the conditions set out in Article 496(1) are fulfilled.

4. BASEL 1 FLOORS (Article 500 of the CRR)

The ECB intends to allow credit institutions which meet the conditions of Article 500(3) of the CRR to replace the amount referred to in point (b) of Article 500(1) (Basel I floor) with the requirement specified in Article 500(2) (which is based on the standardised approaches in the CRR). In all other cases the ECB will assess Article 500(5) applications on a case-by-case basis by taking into account the requirements laid down in the CRR and ensuring a prudent implementation of the CRR framework.

Chapter 7
General requirements for access to the activity of credit institutions

1. WAIVER FOR CREDIT INSTITUTIONS PERMANENTLY AFFILIATED TO A CENTRAL BODY (Article 21(1) of CRD IV)

Credit institutions permanently affiliated to a central body, as described in Article 10 of Regulation (EU) of the CRR, shall not be required to meet the authorisation requirements set out in national law implementing Articles 10 and

12 and Article 13(1) of the CRD IV, provided that the ECB deems that the conditions set out in Article 10(1) of the CRR are fulfilled.

Chapter 8
Timeline for the assessment of proposed acquisitions of qualifying holdings

1. This chapter sets out the ECB's policy on the specific provisions of Article 22(4) and (7) of CRD IV regarding the assessment of qualifying holdings in credit institutions.

2. The ECB plans to keep a flexible stance, in case further information is required to complete the assessment within the context of Article 22 and extend, on a case-by-case basis, the suspension of the assessment period of a qualifying holding application from 20 working days up to 30 working days, under the conditions specified in Article 22(4) of CRD IV. If the criteria in Article 22(3) and (4) are met, the ECB considers that the suspension of the assessment period can always be extended up to 30 working days, provided that such extension is possible under the applicable national law and unless specific circumstances require otherwise.

   As a general rule, a maximum period of three months should be sufficient to conclude the proposed acquisition, without excluding the possibility of an extension, in accordance with Article 22(7) of CRD IV. Potential extensions will be assessed on a case-by-case basis.

Chapter 9
Governance arrangements and prudential supervision

1. This chapter sets out the ECB's policy on specific provisions related to governance arrangements and the prudential supervision of credit institutions.

2. The relevant legislative and regulatory framework is set out in Title VII of CRD IV (and the national implementations of the provisions included in that Title) and the applicable EBA Guidelines.

3. COMBINING THE RISK COMMITTEE AND THE AUDIT COMMITTEE (Article 76(3) of CRD IV)

   The ECB considers that all significant supervised groups should have a separate risk and audit committee at the level of the parent undertaking, or the highest level of consolidation within the participating Member States. At the subsidiary level, the ECB considers that a non-significant institution within the meaning of Article 76(3) of CRD IV can combine the risk committee with the audit committee. For this purpose,

it should be noted that the designation of an institution as non-significant pursuant to Article 76(3) is different from the classification of a credit institution as a significant supervised entity under Article 6 of the SSM Regulation. The categorisation will be assessed by the ECB on a case-by-case basis.

For the purposes of this assessment and for the sole purpose of applying Article 76(3), a credit institution would be considered as significant by the ECB within the meaning of this article if at least one of the following aspects are present:

(i) the assets of the credit institution, calculated on either an individual or a consolidated basis, are equal to, or exceed, EUR 5 billion;

(ii) the credit institution has been identified as an "other systemically important institution" (O-SII);

(iii) the resolution authority has identified critical functions or critical shared services and it envisages the application of resolution tools to the credit institution, instead of orderly liquidation;

(iv) the credit institution has issued transferable shares listed on a regulated market;

(v) the internal organisation as well as the nature, scope and complexity of the activities of the credit institution would justify its classification as a significant institution within the meaning of Article 76(3).

4. ADDITIONAL NON-EXECUTIVE DIRECTORSHIP (Article 91(6) of CRD IV)

The ECB intends to authorise, on a case-by-case basis, members of the management body of a credit institution to hold one additional non-executive directorship, in accordance with Article 91(6) of CRD IV.

For the purpose of this assessment, the ECB would examine whether the following criteria, specifying the conditions of the legislative framework, are met:

(i) whether the person holds a full-time occupation or an executive mandate;

(ii) whether the person holds any additional responsibilities such as membership of committees (e.g. the person is Chair of the audit, risk, remuneration or nominations committee in a supervised entity);

(iii) whether the company is regulated or listed, the nature of its business activities or cross-border business activities, internal group structures and whether or not there are synergies;

(iv) whether the person already benefits from the privileged counting of directorships;

(v) whether the mandate is temporary only, i.e. for less than the duration of one whole term;

(vi) whether the person's experience of the management body or the company is such that he or she could carry out duties with greater familiarity and hence efficiency.

5. APPLICATION OF SUPERVISORY MEASURES TO INSTITUTIONS WITH SIMILAR RISK PROFILES (Article 103 of CRD IV)

The ECB is of the view that similar, or even identical, Pillar II measures may be applied to credit institutions with a similar risk profile, in accordance with Article 103(1) of CRD IV and Article 16(2) of the SSM Regulation, taking as a basis the results of the SREP assessment for these institutions.

6. SUPERVISION OF FINANCIAL HOLDING COMPANIES OR MIXED FINANCIAL HOLDING COMPANIES WITH PART OF THE GROUP IN NON-PARTICIPATING MEMBER STATES (Article 111(5) of CRD IV)

In cases where the parent undertaking is a financial holding company or a mixed financial holding company, the ECB would consider it appropriate to agree that another competent authority of a non-participating Member State be designated as the consolidating supervisor or, alternatively, that the ECB take over as consolidated supervisor from another authority, as specified in Article 111(5) of CRD IV and on a case-by-case basis. In particular, this would be the case where only one, small institution is located in the same non-participating Member State in which the holding company has its head office, but a major part of the group including significant credit institutions is located in one or more of the participating Member States.

7. BILATERAL AGREEMENT ON THE SUPERVISION OF CREDIT INSTITUTIONS IN NON-PARTICIPATING MEMBER STATES

Moreover, in cases where the ECB is the competent authority that has authorised a parent undertaking which is a credit institution, it would, by bilateral agreement with the competent authority of the non-participating Member State, seek to assume responsibility for supervising the subsidiary credit institution authorised in that Member State through delegation of responsibilities from the competent authority of the subsidiary credit institution, in accordance with Article 115(2) of CRD IV.

8. COOPERATION OBLIGATIONS (Articles 117 and 118 of CRD IV)

Within the cooperation obligations of Articles 117 and 118 of CRD IV, the ECB is keen to be able to check information concerning entities in other Member States, as well as to participate in related checks, especially in cases where the national competent authority seeks to verify information, for example by means of an on-site inspection.

9. SUPERVISION OF MIXED FINANCIAL HOLDING COMPANIES (Article 120(1) of CRD IV)

With respect to the supervision of mixed financial holding companies, the ECB, as the consolidating supervisor, would consider it appropriate to exclude them from the application of CRD IV, under the condition that they are subject to equivalent supervision under the Financial Conglomerates Directive (FICOD), particularly in terms of risk-based supervision. Conversely, the ECB would also consider it appropriate to include mixed financial holding companies in the application of those parts of CRD IV relating to the banking sector, provided that this is the most significant financial sector in which these companies operate. The choice between the two approaches will be decided after a case-by-case assessment, taking into account the related delegated acts.

10. ESTABLISHMENT OF FINANCIAL HOLDING COMPANIES OR MIXED FINANCIAL HOLDING COMPANIES (Article 127(3) of CRD IV)

In addition, for the purpose of applying prudential requirements on a consolidated basis, the ECB may consider it necessary to require, on a case-by-case basis, the establishment of a financial holding company or mixed financial holding company in the participating Member State pursuant to the SSM Regulation, under the conditions specified in Article 127(3) of CRD IV and taking into account relevant delegated acts (Commission Implementing Decision of 12 December 2014 and any subsequent amendments).

11. CAPITAL CONSERVATION PLANS (Article 142 of CRD IV)

Finally, the ECB intends to retain some flexibility with regard to the capital conservation plan to be submitted under Article 142 of CRD IV. The ECB is of the view that additional information requests can prove useful, taking into account the individual situation of a bank and the content of the capital plan provided by the same credit institution. The ECB will decide on the timeframe for rebuilding capital buffers on a case-by-case basis; as a general rule, however, this timeframe should not exceed a period of two years. Appropriate measures taken by the ECB of the types specified in Article 142(4) of CRD IV and on the basis of Article 16(2) of the SSM Regulation are not excluded in cases where the ECB considers the plan to be insufficient to conserve or raise sufficient capital, so as to enable the institution to meet its combined buffer requirements within an appropriate period. In any case, a capital conservation plan should be submitted to the ECB, after the identification of the failure to meet a requirement, within the time limits set out in Article 142(1) of CRD IV.

Section III
The ECB's general policy regarding the exercise of certain options and discretions in the CRR and CRD IV where further action or assessment is required

This section provides the ECB's general stance with regard to the exercise of certain options and discretions where further action or assessment is required. Specific policy guidance, potentially including more detailed specifications, will be communicated on the basis of future regulatory developments or further assessment and, where appropriate, also in cooperation with the national competent authorities. The purpose of this section is to communicate the ECB's stance prior to the development of specific policies and specifications.

Chapter 1
Consolidated supervision and waivers of prudential requirements

1. WAIVER OF LIQUIDITY REQUIREMENTS THROUGH MEASURES UNDER ARTICLE 86 OF CRD IV (Article 8(5) of the CRR and Article 2(2) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to exercise the option in Article 8(5) of the CRR and to determine the policy on the exercise of that option and the option in Article 2(2) of Commission Delegated Regulation (EU) 2015/61, including the potential development of more detailed specifications, following an assessment of future specific cases.

2. SUPERVISION ON A SUB-CONSOLIDATED BASIS (Article 11(5) of the CRR)

The ECB is of the view that it is sensible to require institutions to comply with the capital and liquidity requirements of the CRR at a sub-consolidated level in accordance with Article 11(5) of the CRR, in cases where:

(i) it is justified for supervisory purposes by the specific nature of the risks or the capital structure of a credit institution;

(ii) Member States have adopted national laws requiring the structural separation of activities within a banking group.

The ECB intends to further develop its policy in this regard once the European banking structural reform framework is in place.

3. EXCLUSION OF PROPORTIONAL CONSOLIDATION (Article 18(2) of the CRR)

The ECB considers that, in general, full consolidation should be applied for prudential purposes, even in cases where the liability of the parent undertaking is limited to its share of the capital of the subsidiary and the other shareholders must and can meet their liabilities, as specified in Article 18(2) of the CRR. The ECB intends to reassess its policy, based on the criteria to be specified in the Commission Delegated Act which will be issued in accordance with Article 18(7) of the CRR.

4. METHODS FOR CONSOLIDATION IN THE CASE OF PARTICIPATIONS OR CAPITAL TIES OTHER THAN THOSE REFERRED TO IN ARTICLE 18(1) and (4) OF THE CRR (Article 18(5) of the CRR)

The ECB is of the view that, in the case of minority ownership, the use of the equity method is preferable, where feasible, given the available information from the undertaking.

The ECB will also take into account the Commission Delegated Regulation which will be issued in accordance with Article 18(7) of the CRR in order to further develop the specifications for the exercise of this option.

5. CONSOLIDATION IN CASES OF SIGNIFICANT INFLUENCE AND COMMON MANAGEMENT (Article 18(6) of the CRR)

Where a link between credit institutions is established through the exercise of significant influence, without holding a participation or other capital tie, as described in Article 18(6)(a) of the CRR, the ECB considers this as being analogous to cases of minority ownership, thus the policy described above in Paragraph 4 of this section will be applied. The ECB also considers the existence of single management, as defined in Article 18(6)(b) of the CRR, as being analogous to the case of subsidiaries. Thus, full consolidation should be applied as required for subsidiaries by Article 18(1) of the CRR and determined above as with the policy for Article 18(2) of the CRR.

The ECB intends to reassess its policy, based on the criteria specified in the Commission Delegated Regulation which will be issued in accordance with Article 18(7) of the CRR.

6. VALUATION OF ASSETS AND OFF-BALANCE SHEET ITEMS – USE OF IFRS FOR PRUDENTIAL PURPOSES (Article 24(2) of the CRR)

The ECB intends to determine its policy on the exercise of the option in Article 24(2) of the CRR on the basis of the results of an impact assessment, to be carried out in cooperation with the national competent authorities.

Chapter 2
Own funds

1. ELIGIBILITY OF CAPITAL INSTRUMENTS SUBSCRIBED BY PUBLIC AUTHORITIES IN EMERGENCY SITUATIONS (Article 31 of the CRR)

In close and timely cooperation with the European Banking Authority the ECB intends to assess the inclusion in Common Equity Tier 1 of capital instruments subscribed by public authorities in emergency situations in accordance with Article 31(1) of the CRR when future specific cases arise.

2. REDEMPTION OF ADDITIONAL TIER 1 OR TIER 2 INSTRUMENTS BEFORE FIVE YEARS HAVE ELAPSED FROM THE DATE OF ISSUE (Article 78(4) of the CRR)

The ECB intends to permit the redemption of Additional Tier 1 or Tier 2 instruments before five years have elapsed from the date of issue under the conditions specified in Article 78(4) of the CRR on a case-by-case basis and, potentially, to develop further specifications following the assessment of future specific cases.

Chapter 3
Capital requirements

1. EXPOSURES TO PUBLIC SECTOR ENTITIES (Article 116(4) of the CRR)

In exceptional circumstances, the ECB intends to allow exposures to public sector entities to be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established, in cases where it assesses that there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority. For this purpose, the ECB plans to communicate a list of eligible public sector entities, based on cases assessed.

2. RISK WEIGHTS AND LOSS GIVEN DEFAULT FOR EXPOSURES SECURED BY MORTGAGES ON RESIDENTIAL OR COMMERCIAL IMMOVABLE PROPERTY (Articles 124(2) and 164(4) of the CRR)

Within the participating Member States there are different real estate markets with different features and different level of risks. In the light of this, it is necessary to adopt a common methodology allowing the ECB to set appropriately higher risk weights or stricter eligibility criteria than those set out in Articles 125(2) and 126(2) of the CRR for exposures fully and completely secured by mortgages on residential and commercial immovable property located in the territory of one or more Member States.

Such methodology should also make it possible to set higher minimum values of exposure-weighted average Loss Given Default (LGD) than those set out in Article 164(4) of the CRR for retail exposures secured by mortgages on residential and commercial immovable property and not benefiting from guarantees from central governments located in the territory of a Member State, in accordance with the conditions of Article 164(5) of the CRR, as well as the regulatory technical standards referred to in Article 164(6) of the CRR.

The exercise of these options will not be fully operational until this methodology is developed and the conditions set out in Article 124(2) of the CRR have been further specified by the Commission via the Delegated Regulation referred to in Article 124(4)(b) of the CRR. Moreover, in the light of financial stability considerations, these ODs will be exercised in close cooperation with the macroprudential authorities.

Appropriate consideration will also be given to any national measures already in place in order to ensure a consistent approach within territories.

For the purpose of these legal provisions, the assessment will be conducted on an annual basis.

3. DEFAULT OF AN OBLIGOR (Article 178(2)(d) of the CRR)

For the purpose of defining the materiality criterion of a credit obligation past due, the ECB intends to determine its policy based on the relevant Commission Delegated Regulation, within 90 days after publication of that Delegated Regulation in the Official Journal of the European Union. Until that policy is published, the ECB intends to permit all credit institutions using the IRB approach to continue to assess materiality in accordance with the relevant national framework in place.

4. ELIGIBILITY OF UNFUNDED CREDIT PROTECTION PROVIDERS (Articles 201 and 119(5) of the CRR)

In order to enable credit institutions to treat the financial institutions as defined in Article 201(1)(f) of the CRR as eligible providers of unfunded credit protection, the ECB considers financial institutions as defined by the CRR as eligible. With regard to other financial institutions, eligibility will be assessed on a case-by-case basis, based on the robustness of the applicable prudential requirements. For this purpose, the ECB intends to develop further specifications specifying which prudential requirements are considered comparably robust to those applied to institutions.

5. OPERATIONAL RISK: BASIC INDICATOR APPROACH (Article 315(3) of the CRR) AND STANDARDISED APPROACH (Article 317 of the CRR) WITH REGARD TO OWN FUNDS REQUIREMENTS

In the case of mergers, acquisitions or disposal of entities or activities, the ECB intends to exercise both options in each article on a case-by-case basis, in accordance with the conditions specified therein, and to further determine the

manner of their exercise, including the potential development of more detailed specifications, after an assessment of future specific cases.

6. NETTING (MARKET RISK) (Article 327(2) of the CRR)

The ECB intends to determine its policy and potentially develop specifications for exercising the option in Article 327(2) of the CRR in order to allow netting between a convertible and an offsetting position in the instrument underlying it, based on the EBA Guidelines to be issued pursuant to Article 327(2) of the CRR.

7. CAPITAL REQUIREMENTS FOR CREDIT VALUATION ADJUSTMENT RISK (Article 382(4)(b) of the CRR)

For the purposes of Article 382(4)(b) of the CRR, the ECB intends to assess the possibility of requiring intragroup transactions between structurally separated institutions to be included in the own funds requirements for Credit Valuation Adjustment (CVA), once the EU framework on banking structural reform is in place.

Chapter 4
Large exposures

1. LARGE EXPOSURE LIMIT TO INTRAGROUP EXPOSURES IN APPLICATION OF STRUCTURAL MEASURES (Article 395(6) of the CRR)

The ECB intends to assess whether and how to apply large exposure limits below 25% in the case of structural measures, pursuant to Article 395(6) of the CRR, once the European banking structural reform framework is in place. National implementations of this provision will, therefore, continue to be in place until the ECB defines a common approach.

Chapter 5
Liquidity

1. LIQUIDITY OUTFLOWS (Article 420(2) of the CRR and Article 23(2) of Commission Delegated Regulation (EU) 2015/61)

The ECB intends to assess the calibration of applicable outflow rates, following the Short Term Exercise within the Supervisory Review and Evaluation Process and having taken the assessment according to Article 23(1) and (2) of Commission Delegated Regulation 2015/61 into account.