EUROPEAN CENTRAL BANK

BANKING SUPERVISION

PUBLIC CONSULTATION

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

Template for comments

Institution/Company

German Banking Industry Committee

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

In each comment, please indicate:

- the relevant article/chapter/paragraph, where appropriate
- whether your comment is a proposed amendment, clarification or deletion.

If you require more space for your comments, please copy page 2.

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Template for comments

Name of Institution/Company	German Banking Industry Committee
Country	Germany

Comments

Draft Addendum	Issue	Article	Comment	Concise statement why your comment should be taken on board
☒	Chapter 1 – Consolidated supervision and waivers of prudential requirements 3. Capital waivers	Art. 7 (1) CRR	Deletion	The sentence “In particular, the ECB will consider the factors set out under paragraph 4 of this Chapter” should be dropped from subparagraphs 1 and 2 of Chapter 3.1. Liquidity waiver requirements under Article 8 of the CRR are irrelevant to the requirements governing waivers under Article 7 of the CRR. The CRR’s leverage and liquidity requirements pursue totally different objectives.

☒	Chapter 1.3: Capital waivers		Clarification	Art. 7 (1) CRR - We assume that existing waivers will remain valid unless and until specifically revoked by the ECB. This was clearly communicated by the ECB at the public hearing on 11 December 2015 and when the first version of the guide was published (see, for example, feedback statement of March 2016, page 12, D.3.1 number 41). We also assume that existing waivers allowing group regulatory reporting will remain valid (e.g. concerning capital waivers (Chapter 1.3), the exclusion of intragroup exposures (Chapter 1.4) and the calculation of RWAs (Chapter 3.3)) and that additional reporting for individual credit institutions will not be necessary.
☒	Chapter 1.10: Consolidation	Art. 24(2) CRR	Clarification	We welcome that ECB grants the institutions the option to switch to IFRS for the purpose of regulatory reporting on a voluntary basis. However, the proposed conditions set for such an application impose an additional burden to the institutions. Furthermore we deem the conditions as unspecific and open to broad interpretation. If IFRS-based regulatory reporting is already in place at the international consolidated level of a banking group, does subparagraph (3) nevertheless apply to a national subsidiary that is legally obliged to use n-GAAP for accounting purposes? Suppose, for example, a national subsidiary (or subgroup) used to apply n-GAAP for accounting as well as regulatory reporting purposes but switches to IFRS-based regulatory reporting in the interests of consistency within the group, even though there is no (consolidated) external IFRS-based statutory reporting in place:

- Would this, in effect, require a full set of financial statements in accordance with IFRS as endorsed by EU? FINREP-IFRS, for instance, requires a range of data usually provided in IFRS notes under IFRS 7.
- Would, as a consequence, a statement of unreserved compliance with EU-IFRS be required in the IFRS notes and possibly CRR disclosure (IAS 1.16: “An entity whose financial statements comply with IFRSs shall make an explicit and unreserved statement of such compliance in the notes. An entity shall not describe financial statements as complying with IFRSs unless they comply with all the requirements of IFRSs.”)?
- Would this, in turn, lead to consolidation in accordance with IFRS as the aggregation approach under Section 10a (4) of the German Banking Act (KWG) – a special German rule – is generally geared to n-GAAP?
- Would this, in consequence, result in non-application of the waiver under Section 291 of the German Commercial Code (HGB)? If so, would this not have an adverse effect on accounting rules?

Does the statement “for prudential purposes the same accounting framework will apply to all reporting entities within a group” in condition (3) also include solo reporting level of subsidiaries even though solo regulatory reporting is usually based on n-GAAP if the parent company has elected to switch to IFRS on solo reporting level? Take, for instance, a bank that is supposed to report (i) at solo level and is also included in reporting (ii) at national consolidated (sub-)group level and finally in overall consolidated reporting (iii) at group level. We expect that these reports do not have to be switched simultaneously to IFRS if the overall parent company has elected to switch to IFRS on solo level but that an individual switch for each subsidiary to IFRS on a “level-by-level” basis is allowed. At least a group application to switch to IFRS should allow for an perennial, entity-by-entity transition plan, given that application of Art. 24 (2) CRR would be subject to an adequate implementation time as stated in Art. 466 CRR.

Condition (4) requires a “reconciliation” which is not further defined. At national sub-group level there is usually no dual GAAP consolidation. Requiring a granular reconciliation would create the necessity to perform a full consolidation in two different GAAPs (IFRS and national). This would impose a tremendous additional burden to the institutions. As we understand your concern with regard to different prudential measures depending on the chosen GAAP we do not fully object to a certain need for reconciled figures but we recommend to limit the reconciliation requirement to Own Funds and require it only for the first two years after initial application of Art. 24 (2).

If IFRS are used voluntarily, the use “will apply (…) to all relevant prudential reporting requirements” (Chapter 1.10, page 4). It is not clear exactly how the term “relevant prudential reporting requirements” is to be understood. Since the following list in brackets is not exhaustive, it is unclear whether IFRS would also have to be used for national prudential reporting requirements (e.g. German large exposure reporting requirements, requirements under the German Financial and Internal Capital

				Adequacy Information Regulation (FinaRisikoV), etc.) and/or whether this decision would be at the discretion of the national competent authority. Furthermore, it is unclear whether “all relevant prudential reporting requirements” refers only to group reporting, if this has to be reported under n-GAAP, or to all single and group reporting? It is not totally clear what firms are covered by “legal entities within a banking group” in condition (2). We assume this to mean all entities fully consolidated as subsidiaries in the scope of regulatory consolidation. In other words, the term is not meant to cover proportionally consolidated stakes in joint ventures and associated companies or other interests or shares in prudentially non-consolidated subsidiaries such as insurance companies. If an application is made by a parent company with prudentially consolidated sub-groups, moreover, it is unclear whether it will be sufficient for the legal representatives of the parent of the sub-group to submit the application.
☒	Liquidity Chapter 5.4: Additional collateral outflows from downgrade triggers	Art. 30(2) Delegated Regulation (EU) 2015/61	Clarification	We consider a materiality threshold of 1% of an institution’s total outflows to be too low to identify a material outflow for the purpose of the LCR calculation. Furthermore, we suggest introducing a harmonised methodology to detect material outflows in the context of the LCR rules. We assume that “outflows” means total payment outflows pursuant to template C76.00, row 300, i.e. not net payment

				outflows. In order to achieve a harmonised methodology for identifying material outflows in the LCR system, we suggest raising the materiality threshold from 1% to 10% of net payment outflows, as when determining material outflows in connection with additional outflows for collateral needs relating to derivatives transactions (Article 423(3) of the CRR and the final draft of the EBA's RTS 2014/05). This will help to avoid the disproportionate burden on small banks which a lower threshold would generate and will at the same time harmonise the definition within the context of the LCR. The ECB's proposal does not take account of the so-called floor rating which constitutes a minimum rating for some of our members, such as all institutions in the Savings Banks Finance Group. These banks do not normally have an individual external rating.
☒	Liquidity Chapter 5.14: Cap on inflows	Art. 33(2) Delegated Regulation (EU) 2015/61	Clarification	It should be possible to obtain an exemption irrespective of whether or not the threshold is reached (see penultimate paragraph on page 10). This is the only way that banks near the threshold will have a degree of planning certainty. On top of that, it should be possible to judge whether or not the criteria are met regardless of the bank's current inflow/outflow ratio.
☒	Liquidity Chapter 5.14: Cap on inflows	Art. 33(2) Delegated Regulation	Deletion	Chapter 5.14 (2) sets minimum requirements for granting an exemption from the cap on inflows. According to (2) (iii) a contractual agreement giving rise to the inflows cannot be changed substantially without prior approval of the ECB. In our

		(EU) 2015/61		opinion this conflicts with the freedom of contract. In the absence of any discernible legal basis for such a provision, we suggest deleting (2) (iii).
☒	Liquidity Chapter 5.14: Cap on inflows	Art. 33(2)(b) Delegated Regulation (EU) 2015/61	Amendment	By setting a cap on liquidity inflows at 75% of outflows, the CRR obliges banks to maintain a liquidity buffer of 25%of outflows even if their funding structure consists of totally matched maturities. Experience shows that one of the main reasons for the high degree of stability, even over different market phases, in networks of banks belonging to an institutional protection scheme is the “division of labour” in ensuring liquidity adequacy, with direct and stable retail funding through the local institutions while the central institutions perform the function of liquidity allocation. This business model requires a high level of deposits within the network, which guarantees the network’s robustness and is taken into account, inter alia, by recital 16 in conjunction with Article 33(2) of Delegated Regulation (EU) 2015/61. This exemption should be retained in its present form, without restrictions. What is more, formal decisions and administrative acts which have already been adopted should also remain valid and be protected by grandfathering arrangements (e.g. collective decrees concerning the German network of cooperative banks issued by the Federal Financial Supervisory Authority (BaFin) on 2 November 2015).
☒	Liquidity Chapter 5.14: Cap on inflows	Art. 33(2)(b) Delegated Regulation	Amendment	We consider conditions (vii) to (ix) on page 13 excessively onerous and bureaucratic, especially given that they may later also be applied to less significant institutions. What is more,

		(EU) 2015/61		points (vi) and (ix) effectively duplicate one another. Point (vii) would be virtually impracticable for IPS networks with more than 1000 members. A number of questions arise as to the practical aspects of implementing point (viii).
☐	Chapter 9.3 Governance arrangements and prudential supervision	9.3	Deletion	Chapter 9.3 of the existing guide on options and discretions published in March 2016 requires significant institutions to have separate risk and audit committees. The guide defines the term “significant institution” for the purpose of applying Article 76(3) of CRD IV. The ECB takes the view that, “if the assets of the credit institution (…) are equal to, or exceed, EUR 5 billion”, this is sufficient to classify it as significant. This criterion should be deleted. Total assets are not an appropriate criterion, especially with a threshold set at only 5 billion euros, which would excessively increase the number of affected banks without any objective justification. The value of a bank’s transactions says nothing about the level of associated risk. It should be possible instead to decide on a case-by-case basis whether or not to permit a combined risk and audit committee depending on the type, size and complexity of the bank’s business (principle of proportionality). If the ECB nevertheless decides to retain the focus on total assets, it will be essential to set the threshold at a much higher level. In the context of the SSM, for example, European lawmakers consider consolidated total assets of 30 billion euros an appropriate criterion for identifying significant institutions.

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		There is no discernible reason why a different threshold should be set for the purpose of applying Article 76 of CRD IV.
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