German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

Public consultation on revisions to the ECB's policies concerning the exercise of Options and Discretions (O&Ds) in Union law

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The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

Public consultation on revisions to the ECB's policies concerning the exercise of Options and Discretions (O&Ds) in Union law

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Template for comments

Public consultation on revisions to the ECB's policies concerning the exercise of Options and Discretions (O&Ds) in Union law

ECB Guide on Options and Discretions under Union law

Please enter all your feedback in this list.
When entering feedback, please make sure that:
- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
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Deadline: midnight CET on 10 January

ID	Section	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Section II, Chapter 1, No. 15	23	Deletion	We appreciate that the ECB generally maintains its decision not to exercise the option set out in Article 24(2) CRR, which allows competent authorities to use IFRS for prudential purposes, even where the national applicable accounting framework requires the use of nGAAP. However, we strongly object to the ECB's intention to consider exercising this option on a case-by-case basis. Specifically, we request the deletion of the newly introduced sentence: "However, the ECB may consider exercising the option set out in Article 24(2) on a case-by-case basis, if duly justified from a supervisory perspective."	Requiring institutions that apply nGAAP to prepare IFRS-based figures for prudential purposes, even in exceptional cases, is inappropriate and imposes disproportionate burdens. IFRS were designed for capital market-oriented and cross-border companies, whereas nGAAP institutions are typically regionally focused and not capital market-oriented. The dual requirement to prepare figures in accordance with both IFRS and nGAAP would result in significant additional processual and IT costs, without providing any tangible benefit for the institutions or the supervisory framework. To ensure proportionality and avoid unnecessary administrative burdens, we strongly recommend deleting the newly introduced sentence and maintaining the current approach of not exercising the option under Article 24(2) CRR.	Gehler, Svetlana	Publish
2	Section II, Chapter 2, No. 8	28	Amendment	We would appreciate if the requirements and documents to be provided would be taken into account in a proportionate manner to the applied reduction in own funds. This means that in the case of very small amounts of applied reductions in own funds (e.g with with effekt on Captal Ratios <10bp), lower or graduated doumentation should be required. This refers to the scope and as well to the uptodateness of the documents. In cases with very low materiality, it should also be possible for the ECB (the JST's) to make a decision solely on the basis of the ECB's already available information. We also understood from JSTs that this could make the process much easier for the ECB and Banks, without any aditional risks.	Operational burden for institutions and ECB (JSTs).	Gehler, Svetlana	Publish
3	Section II, Chapter 2, No. 9	29	Amendment	This does not reflect the intention of the latest changes of the RTS on Own Funds (DR 2014/241) which was to reduce the burden for all parties involved in the approval process. Against this background, we would appreciate if the ECB (the JST) would be able to refrain from the requirement of new documents in the case of unchanged renewals of continuing general prior permission (same amount, small amout) on a case-by-case basis. In those cases it should also be able to make a decision on the basis of the already available information.	Operational burden for institutions and ECB (JSTs).	Gehler, Svetlana	Publish

4	Section II, Chapter 2, No. 16	31-32	Amendment	Regulation 2024/1623 (“CRR3”) has amended Art. 84 (1) CRR by adding a new subparagraph which provides that institutions may derogate from the „lower of the two requirements“-rule of Art. 84 (1) (a) CRR when calculating the amount of minority interest that is eligible for being recognised in the consolidated CET1 capital of the consolidated banking group: “By way of derogation from point (a) of the first subparagraph, the competent authority may allow institutions to subtract either of the amounts referred to in point (i) or in point (ii), once the institution has demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level;” The revised ECB’s guide on options and discretions in chapter 16 (p. 31 et. seq.) establishes criteria to demonstrate loss absorbency on group level that in our view go significantly beyond the legal rationale of the CRR rules on minority interest recognition. The ECB’s explanatory document introduces a new requirement for the automatic intragroup transfer of resources by stating the following: “Since capital held by third-party investors covers the losses suffered by the issuing entity only, in order to make it possible for this capital to also absorb losses at consolidated level, an automatic intragroup transfer of resources would be needed.” In our view, the general requirement for an automatic intragroup transfer of resources to demonstrate loss absorbency for the additional amount of minority interest recognised is inconsistent with the current requirements for minority interests and not supported by the legal rationale of the CRR. Furthermore, it is not consistent with the Basel standard and rationale for the „lower of the two requirements“-rule. Specifically in situations where the subsidiary’s stand-alone requirements are lower than the capital requirements that relate to it on group level, e.g. cases where the institution wants to apply point (ii) of Art. 84 (1) (a) CRR as a derogation from the „lower of the two requirements“-rule such an intragroup transfer requirement should not be applicable. In this case loss absorbency on group level is given if the capital requirements on group level are supported by the capital of the subsidiary. In the opposite case where the stand-alone requirements are higher than the capital requirements that relate to it on group level, we do understand that in order to prove loss absorbency on group level such an automatic transfer might be required. In our view it will in practice however not be possible to fulfil this requirement. 1. Automatic intragroup transfer not aligned with legal rationale of minority interests under the CRR 3 As articulated by the “Fiche on minority interest” during the CRR 3 legislative process, the current minority interests recognised are considered loss absorbent on group level although there is no automatic intragroup transfer. The reasoning of the Fiche acknowledges the economic and legal reality that a loss is absorbed in the subsidiary (where the minority interest originates) by the own funds of the subsidiary (and not by the own funds of other undertakings that belong to the same group). It is considered sufficient that there are regulatory capital requirements based on which the subsidiary will maintain the own funds needed to fulfil them. In the current rules, this is limited to the „lower of the two requirements“-rule of Art. 84 (1) (a) CRR. In our view, the same definition of loss absorbency should also apply for the new derogation. I.e. the minority interest recognised can be considered loss absorbent at group level if the amount is limited to a capital requirement applicable to the subsidiary that reflects the higher capital requirement of the subsidiary on group level.		Gehler, Svetlana	Publish

“In more practical terms this means, in case the subsidiary’s own funds instruments are written down or converted, the generated loss absorption is confined to the subsidiary. Therefore, the recognised minority interest is limited to the requirements applicable to the subsidiary”.

Note that for the new CRR 3 derogation from the „lower of the two requirements“-rule of Art. 84 (1) (a) CRR, this may also relate to the higher capital requirements that apply to the subsidiary on the consolidated level (under Art. 84 (1) (a) point (ii) CRR) (although the ECB’s Guide with its automatic loss transfer requirements solely seems to focus on cases where the stand-alone requirements of the subsidiary are higher than the actual risk contribution of the subsidiary under CRR rules and where the ECB might therefore expect a demonstration that the excess capital is available to cover losses elsewhere in the group, see 2. for more detail).

Under the CRR 3, deviations from the „lower of the two requirements“-rule of Art. 84 (1) (a) CRR are possible, provided sufficient loss absorbency of the additional amount (which is based on a regulatory requirement that applies to the subsidiary under Art. 84 (1) (a) point (i) or (ii) CRR) is demonstrated by the institution(e.g. that the subsidiary continuously steers its own funds above the capital requirements that apply to it on the consolidated level, and that the parent can ensure that the subsidiary meets its consolidated capital requirements, Art. 84 (1) (a) point (ii) CRR).

Therefore, we see no basis in the regulation for requiring an automatic intragroup transfer for the additional amount under the derogation introduced by the CRR 3, especially for cases where the subsidiary’s stand-alone requirements are lower than the group requirement (as explained in more detail below under 2.).

With regard to the Basel standard the reason to limit the recognition of minority interest to the amounts being used to cover the minimum capital requirements on subsidiary level and not only on group level (lower of the two requirements-rule) was explained in the Definition of capital in Basel III – Executive Summary :“As surplus capital in the subsidiary, that is, more than the statutory minimum requirement, could be repaid to the holders of the non-controlling interest”. Accordingly, there is no basis for requiring an automatic intragroup transfer. This makes clear that the focus is to ensure that sufficient excess capital is available on subsidiary level to rule out this risk.

Moreover, if loss absorbency would be defined such that an automatic intragroup transfer via the provisions of own funds instruments would be required, it would be impossible to fulfil such a requirement. Apart from legal impediments in corporate law of European countries, this is because any subsidiary that is subject to own funds requirements on a standalone basis, which is a mandatory requirement according to Art. 84 (3) CRR, would not be able to meet the requirement for provisions for automatic absorption of losses incurred by other group entities without violating the qualitative requirements for the recognition of the subsidiary’s own funds instruments under the CRR and IFR.

In more detail:

Section II, chapter 2, point 16 (1) of the consultation on the revisions to the ECB guide on options and discretions specifies that the ECB will assess the following two criteria:

“whether the provisions governing the instruments owned by persons other than the undertakings included in the consolidation […] include loss-absorption mechanisms that are automatically activated in the case of losses suffered by other undertakings included in the consolidation […]
or
if those undertakings are subject to write-down or conversion of their capital instruments or eligible liabilities pursuant to Article 59 of the BRRD”.

Comments on the first criterion regarding the terms and conditions of the relevant instruments

If loss absorbency would be defined such that an automatic intragroup transfer would be required, it would be impossible to fulfil such a requirement. This is because a subsidiary that is subject to own funds requirements on a standalone basis would not be able to meet the requirement for the automatic absorption of losses incurred by other group entities without violating the qualitative requirements for the recognition of the subsidiaries’ own funds instruments under the CRR and IFR.

CET1 instruments by design absorb the losses of their issuer (e.g. the issuing institution), but not the losses of e.g. other subsidiaries of an ultimate parent.

In company law, stocks of stock corporations are part of share capital of the stock corporation that absorb the losses of the stock corporation, which is not liable for losses incurred by other entities in a wider or different consolidation circle of a group. The assessment of the eligibility of CET1 instruments under the CRR is also tied to a classification as stocks in the sense of the applicable national company law (see the EBA’s list of capital instruments that competent EU and EEA authorities have classified as CET1).

Further, Art. 28 (1) (i) CRR on the loss absorbency of CET1 instruments requires that “compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments”.

The creation of AT1/T2 instruments that absorb losses pari passu with CET1 instruments could accordingly endanger the CET1 instruments of the subsidiary. Moreover, it would be doubtful if CET1 instruments that designed to absorb losses of other group entities would still be available to absorb the losses of their issuer first, as required by Art. 28 (1) (i) CRR. The inclusion of mandatory distributions in the provision of the subsidiary’s CET1 instruments to cover losses of other group undertakings would also violate the requirements for CET1 instruments, in this case Art. 28 (1) (h) CRR (“the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation”).

For AT1/T2 instruments, it would not be aligned with the concepts of AT1/T2 loss absorption if the AT1/T2 instruments of a subsidiary would absorb the losses of its ultimate parent and of any “upstream” subsidiary of the parent. If e.g. the AT1 instruments of the subsidiary would be written down due to such losses, the requirement of Art. 54 (3) CRR (that the amount of instruments recognised in AT1 items is limited to the minimum amount of CET 1 items that would be generated if the principal amount of the AT1 instruments were fully written down or converted into CET1 instruments would no longer be met, since this relates to the subsidiary and not to the wider consolidated group of entities.

Finally, if the subsidiary’s own funds instruments (CET1/AT1/T2 instruments) would equally absorb losses (here: of other group entities), this could endanger their ranking.

Comments on the second criterion regarding Art. 59 BRRD

This second criterion relates to “Article 84(1), point (a), of the CRR”, i.e. the rules on the inclusion of certain CET1 items (such as CET1 instruments) of the subsidiary in the consolidated CET1 capital and refers to: “if those undertakings are subject to write-down or conversion of their capital instruments or eligible liabilities pursuant to Article 59 of the BRRD”. It is not clear to us what is meant by “write-down or conversion” with respect to CET1 instruments and how this could be achieved for CET1 instruments.

We also note that it is unclear to which entity this requirement applies and under which circumstances the write-down of conversion must be triggered.

The wording “[…] loss-absorption mechanisms that are automatically activated in the case of losses suffered by other undertakings included in the consolidation […] or if those undertakings are subject to write-down or conversion of their capital instruments or eligible liabilities pursuant to Article 59 of the BRRD” suggests that the criterion applies to the undertaking that has incurred the loss. However, based on the context, we assume it applies to the subsidiary from which the minority interest originates.

We further assume that the write-down or conversion requirements apply to AT1 or T2 instruments issued by the subsidiary from which the minority interest originates, since a conversion of CET1 instruments would not make sense.

Equally, it is not clear under which circumstances the write-down or conversion must be triggered. In a SPE group, write-down or conversion will not be triggered automatically by the resolution authority for the own funds instruments of subsidiary A if another subsidiary B suffers losses (the idea would rather be that losses are effectively passed on to the resolution entity).

2. ECB Guide should differentiate between (a) cases where the stand-alone capital requirements of the subsidiary are lower and (b) cases where the stand-alone capital requirements of the subsidiary are higher

Finally, the Guide’s requirements for an automatic intragroup transfer are especially unsuitable for cases where the stand-alone capital requirements of the subsidiary are lower (i.e. where the institution wants to apply Art. 84 (1) (a) point (ii) CRR instead) – as evidenced by The “Fiche on minority interest”.

The “Fiche on minority interest” explains the rationale of the pre-CRR 3 „lower of the two requirements“-rule as follows: “to ensure that the risk and capital allocated to the subsidiary do not exceed those determined at the consolidated level” (see the part of the text starting with “however”):

“The rationale for limiting the recognition of minority interests is that only the amount of minority interests that would cover losses on consolidated level should be recognised at consolidated level.
[…]
In more practical terms this means, in case the subsidiary’s own funds instruments are written down or converted, the generated loss absorption is confined to the subsidiary. Therefore, the recognised minority interest is limited to the requirements applicable to the subsidiary.
However, to ensure that the risk and capital allocated to the subsidiary do not exceed those determined at the consolidated level, a second safeguard was introduced, which limits the recognition to the requirements on consolidated level. The lower of the two levels should be applicable, ensuring that only that part of own funds is recognised on a consolidated level, which would absorb losses attributable to the group.”

				The above explains that the cap at the capital requirement from a group perspective was deemed necessary to align the amount of minority interest recognised with the amount of risk considered, i.e. to cap the recognition of minority interest in cases where the group's consolidated capital requirement of the subsidiary is lower than the subsidiary's standalone capital requirement. This cap ensures the loss absorbency on group level, as it restricts the minority interests recognised on group level to the capital requirements applicable on group level for the subsidiary. The CRR3 allows to derogate from the currently irremovable constraint of "the lower of the two levels should be applicable" condition and it provides institutions with the opportunity to demonstrate to the competent authority that the higher amount would also be loss absorbent at group level. In order to recognise this additional amount of minority interest at group level, it is necessary to demonstrate that this amount is available to absorb losses at the consolidated level. In this context it is important to distinguish the two possible scenarios with regards to minority interest recognition, namely (a) a situation where the minimum capital requirement at the standalone subsidiary level is lower than the requirement from a group contributory perspective; and (b) a situation where the standalone requirement is higher than the group contributory one; In our view, to recognise an additional amount of minority interest at group level under the new CRR3 rules, in category (a) it must be demonstrated that there is sufficient capital in the subsidiary where the minority interest originates to cover the higher group requirements for the subsidiary. In this situation, loss absorbency on group level does not require that minority interests cover losses outside of the subsidiary where the minority interest originates. Instead, it is required to demonstrate that the subsidiary has sufficient capital to cover its higher capital requirement from a group perspective (e.g. dur to higher P2R or G SIB / O SIB Buffers on consolidated level). We therefore suggest amending the O&D Guide accordingly and to differentiate the loss absorbency requirements for the recognition of additional amounts as minority interests in alignment with the legal rationale of the CRR.		
5	Section II, Chapter 3, No. 3-4	33-38	Clarification	In principle, the proposed framework is overly complex and redundant (e.g. chapter 3, No. 3 paragraph 5(iii) and (v) refer both to demonstration of trading intent). Since the proposed framework does not refer to internal hedges, we presume, that it only applies to external transactions.	To ensure clarity and a harmonised application the scope of the chapter needs to be clarified.	Gehler, Svetlana	Publish

6	Section II, Chapter 3, No. 3	33-34	Deletion	The ECB should exclude instruments referred to in Article 104(3)(h) of the CRR (own liabilities) from the priority order set out in the second paragraph of Section II, Chapter 3, No. 3. Own liabilities that are 'instruments classified unambiguously as having a trading purpose under the accounting framework applicable to the institution' should continue to be allocated to the trading book in order to ensure a synchronised treatment of such instruments in terms of both regulatory and accounting treatment. Furthermore, this treatment has been and would continue to be appropriate to the nature of such instruments and in line with the spirit of the Basel standards.	A general inclusion of own liabilities in the non-trading book, even in the case of instruments classified as held for trading/allocated to the trading portfolio under the relevant accounting framework, would lead to the following (non-exhaustive) problems: • De-synchronisation of the accounting and regulatory treatment of own liabilities when they are issued for trading purposes under the accounting rules. An own liability that is a structured instrument would be recognised at market value in the trading portfolio or in the held for trading category, subject to the established intention to trade requirements. This valuation for accounting purposes would conflict with a non-trading book designation of such liabilities required for regulatory purposes. Any resulting adjustments such as a seperation of the liability from the underlying derivative would require much time and effort. • If the new treatment of own liabilities were to be applied to those already on the books, these existing instruments would have to be reclassified, even though they do not normally have long maturities. In principle, IFRS does not provide for reclassification of liabilities as this must be done once at the time of issue. The same applies to other account frameworks. • The new priority order creates uncertainty about reporting requirements, as it remains unclear how classification criteria such as trading purpose are to be interpreted. The regulatory treatment of the trading book/non-trading book boundary should reflect differences across banks and accounting regimes and allow for a synchronised treatment of instruments in each bank.	Gehler, Svetlana	Publish
7	Section II, Chapter 3, No. 3	34	clarification	No. 3, paragraph 5 (viii) asks for actions envisaged for positions that no longer meet the conditions for banking book allocation. As Art. 104 (4) allows a banking book allocation only in case of lacking trading intent, does this imply, that once the institution has trading intent again, the position moves back to trading book?		Gehler, Svetlana	Publish
8	Section II, Chapter 3, No. 3	35	clarification	No. 3, paragraph 6 (ii) (b) requests the termination of the hedging derivative instrument in case the hedged instrument expires, is sold, terminated or exercised. In addition to discontinuing the hedge, the hedge would be subject to the mandatory trading book allocation under Art. 104 (2) (b) and also be allowed to move to the trading book? Also, a documentation confirming that the hedging derivative has been discontinued is requested. As the discontinuation happens post the ECB approval to assign the derivative to the banking book, does this requirement imply, that an additional information to ECB is requested once the derivative is discontinued?		Gehler, Svetlana	Publish
9	Section II, Chapter 3, No. 3	35	clarification	No. 3, paragraph 6 (iii) (a) is speaking of “hedge effectiveness and hedge relationship”. The concept of “hedge effectiveness” is known under IFRS. However, in this case it cannot refer to IFRS since any derivative that is a designated and effective hedging instrument under IFRS does not qualify as derivative under IFRS and is therefore not subject to the presumed trading book allocation under Art 104 (2) (d). The demonstration of any form of “hedge effectiveness” should be allowed based on different concepts, e.g. CRR credit risk mitigation framework for RWA hedges in the banking book, economic hedging for non-RWA hedges or relying on the IRRBB framework for IRRBB hedges.	The current wording is not clear and might leave banks with contradicting requirements.	Gehler, Svetlana	Publish
10	Section II, Chapter 3, No. 3	36	deletion	No. 3, paragraph 6 (vii) is redundant to (x) as the lacking trading intent is the justification for banking book assignment relevant for both (vii) and (x).		Gehler, Svetlana	Publish
11	Section II, Chapter 3, No. 4	37	clarification	Section 4 paragraph 5 (v) is speaking of Art. 104 (4) and non-trading book management. As it is about hedge funds, should not it be Art. 104 (5) and trading book management instead?		Gehler, Svetlana	Publish

12	Section II, Chapter 3, No. 6	41	deletion	1. We appreciate that the ECB does not interpret this article too restrictive with respect to subsidies and guarantees 2. In general, the ECB should understand the term 'legislative program' in a broad manner. Any legislative provision which fulfils the criteria mentioned should be understood as a program in the meaning of Article 133 (5) CRR. 3. The proposed requirement that the combined effects of risk reduction measures "generally commensurate with the reduction in risk weights from applying the derogation in Article 133(5). could be misinterpreted as an additional prerequisite that goes beyond the requirements of the CRR and should therefore be deleted.		Gehler, Svetlana	Publish
13	Secting II, Chapter 3, No 8	42-44	clarification	•We propose to align the unexpected loss % with the Guidance for the ECB Fast-track approval process. In the guidance, UL% is the one at inception and is assumed to be kept constant over time and does not evolve with portfolio amortization. The allocated UL in the last year of the transaction is calculated using the outstanding portfolio size rather than the initial portfolio size to reflect the amortization of the portfolio. •We propose to align the end date of the securitization with the Guidance for the ECB Fast-track approval process for the purpose of allocating expected and unexpected losses in this test. The end date should be the date of the time call (calculated as last day of the replenishment period + WAL) or the date of the clean-up call; whichever is first.	Statement why both comments should be taken on board: without this clarification, it is not clear how regulatory UL and the term 'whole life of securitisation' are defined. With this proposed clarification, an alignment to the guidance provided for the ECB Fast-track approval process is achieved and thus, the same UL calculation and the same end dates are used which simplifies the process on bank and ECB side.	Gehler, Svetlana	Publish
14	Section II, Chapter 5, No. 3	62	deletion	The ECB has issued a comply statement regarding EBA/GL/2021/09 "Guidelines on the breaches of the large exposure limits and the measures to be taken to restore compliance with those limits" (17.12.2021). These guidelines are more differentiated and allow for adequate discretion for the respective supervisory authorities. A rigid limit of 100% of the capital base is deliberately not included in the guidelines, and applying such a rigid limit to LSIs under the framework of the ECB's recommendation would also risk undermining Article 396(1), second paragraph: "Where the amount referred to in Article 395(1) of EUR 150 million applies, competent authorities may, on a case-by-case basis, allow the limit of 100% in relation to the institution's Tier 1 capital to be exceeded."		Gehler, Svetlana	Publish
15	Section II, Chapter 11, Number 3	89	amendment	Regards the definition of significant credit institutions, point (i): In our opinion, the asset size criterion should be raised to EUR 15 billion. The current criterion (EUR 5 billion) would in principle mean that all institutions that are not SNCIs would be immediately deemed as "significant". In our opinion, this does not correspond to the intention of Art. 76 (3) CRD. EUR 15 billion, based on the SSM definition of "high impact" LSIs, would be appropriate. If no adjustment is made, it should at least be made clear that this asset size is solely relevant in relation to the requirement of Art. 76 (3) CRD.	Raise the asset size criterion to EUR 15 billion, in order to reflect the meaning of "significant".	Gehler, Svetlana	Publish

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ECB Regulation on Options and Discretions under Union law

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Deadline:	midnight CET on 10 January

ID	Section	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Art. 1	Amendment	Art. 1 sentence 2 determines that the ECB regulation shall apply exclusively with regard to those credit institutions classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013, and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17). The last review and revision of the ECB Regulation did not take into account the fact that, since the amendments to the CRR II and CRD V, financial holding companies approved in accordance with Article 21a of Directive 2013/36/EU (CRD V) are required to comply with the obligations laid down in Parts 2, 3, 4, 7 and 7A in accordance with Article 11(2) CRR to the extent and in the manner provided for in Article 18 on the basis of the consolidated situation. Similarly, if the financial holding group is significant, the financial holding company at the head of a financial holding group is also classified as significant by the ECB. Accordingly, the ECB Regulation should also apply to financial holding companies mutatis mutandis that are classified as significant. We propose the following addition to sentence 2 in Article 1: “It shall apply exclusively with regard to those credit institutions and financial holding companies classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013, and Article 40(2) and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17)“	The ECB regulation should mutatis mutandis apply for financial holding companies classified as significant by the EZB that have to comply with the provisions of the CRR on the basis of the consolidated situation.	Gehler, Svetlana	Publish

2	Art. 1, No. 2 with regard to Art. 24a	Amendment	The proposed amendment in Article 24a of Regulation (EU) 2016/445 (ECB/2016/4) raises significant concerns. The decision to shorten the transitional period for the use of ECAI credit assessments incorporating assumptions of implicit government support to 1 July 2026 imposes an unnecessary restriction on the flexibility granted under CRR III. The CRR III provides for a transitional period until the end of 2029, which offers a more appropriate and reasonable adjustment timeframe. The ECB has not provided a clear justification for this deviation, raising questions about the proportionality of the measure. We therefore advocate for aligning the transitional arrangements with the timeline stipulated in CRR III to ensure that institutions are granted adequate time for implementation.	The proposed deviation from the CRR III imposes unnecessary constraints without a clear rationale. Aligning with the CRR III timeframe ensures consistency with EU legislative intent.	Gehler, Svetlana	Publish

3	Art. 9(7)	Amendment	Art 9(7) determines that this Article shall only apply where the relevant Member State has not exercised the option under Article 493(3) of Regulation (EU) No 575/2013 to grant a full or partial exemption for the specific exposure. The member state option of Art. 493 (3) letter c) CRR only applies for a transitional period until 31 December 2028, after which Art. 9 (3) applies for an exemption in accordance with Art. 400 (2) letter c) CRR with the consequence that the extensive conditions of Annex I, which differ from the national requirements, must be fulfilled and demonstrated within the application. In order to facilitate the transition to the provision of Art. 9 (3) in conjunction with Annex I and to avoid friction, institutions in jurisdictions in which member states have exercised their option under Art. 493 (3) (c) CRR should also be given the opportunity to apply for an exemption under Art. 9 (3). We propose the following amendment: “This Article shall only apply in principle where the relevant Member State has not exercised the option under Article 493(3) of Regulation (EU) No 575/2013 to grant a full or partial exemption for the specific exposure. By way of derogation from sentence 1, the ECB may for exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution also authorise an exemption on the basis of Article 9 (3) at the request of the credit institution.”	In order to facilitate the transition to the provision of Art. 9 (3) in conjunction with Annex I until 31 December 2028 for institutions in Member States in which the Member State has exercised the option of Art. 493 (3) letter c) CRR to fully or partially exempt exposures to the entities of the supervised group, and to avoid friction, they should in addition also be given the opportunity for an exemption under Art. 9 (3).	Gehler, Svetlana	Publish

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Deadline:	midnight CET on 10 January

ID	Section	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Part Two, Section Ia	amendment	In principle, it is understandable that institutions classified repeatedly as “High Risk” should be subject to a review by the NCA to determine whether their classification as an SNCI is still justified. However, it should also be clarified that a possible withdrawal of this classification may only take place with prior information of the institution concerned, in order to give it the opportunity to make a statement. An appropriate lead time should also be granted in cases of a removal of facilitations associated with the SNCI classification.	In order to ensure fair treatment of concerned SNCIs, an obligation for prior information and an appropriate lead time (in relation to a withdrawal of the SNCI classification) should be added.	Gehler, Svetlana	Publish

2	Part Two, Section Ia, 2. In conjunction with Annex	deletion	The ECB has issued a comply statement regarding EBA/GL/2021/09 "Guidelines on the breaches of the large exposure limits and the measures to be taken to restore compliance with those limits" (17.12.2021). These guidelines are more differentiated and allow for adequate discretion for the respective supervisory authorities. A rigid limit of 100% of the capital base is deliberately not included in the guidelines, and applying such a rigid limit to LSIs under the framework of the ECB's recommendation would also risk undermining Article 396(1), second paragraph: "Where the amount referred to in Article 395(1) of EUR 150 million applies, competent authorities may, on a case-by-case basis, allow the limit of 100% in relation to the institution's Tier 1 capital to be exceeded."		Gehler, Svetlana	Publish