

**RECOMMENDATION OF THE EUROPEAN CENTRAL BANK****of 4 April 2017****on common specifications for the exercise of some options and discretions available in Union law  
by national competent authorities in relation to less significant institutions****(ECB/2017/10)**

(2017/C 120/02)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>(1)</sup>, and in particular Article 4(3) and Article 6(1) and (5)(c) thereof,

Whereas:

- (1) The European Central Bank (ECB) is responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM). It oversees the functioning of the system to ensure the consistent application of high supervisory standards and the consistency of supervisory outcomes across the participating Member States.
- (2) The ECB has to ensure the consistent application of prudential requirements for credit institutions within the participating Member States under Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)<sup>(2)</sup>.
- (3) As the competent authority to do so pursuant to Regulation (EU) No 1024/2013, in relation to credit institutions that are classified as significant, the ECB has exercised a number of options and discretions, which are set out in Regulation (EU) 2016/445 of the European Central Bank (ECB/2016/4)<sup>(3)</sup>. In addition, in its guide of November 2016 on options and discretions available in Union law (hereinafter the 'ECB Guide'), the ECB sets out a common set of specifications for the exercise on a case-by-case basis of certain other options following individual assessment of applications by credit institutions that are classified as significant under Article 6(4) of Regulation (EU) No 1024/2013 as well as under Part IV and Article 147(1) of Regulation (EU) No 468/2014.
- (4) In order to foster a common supervisory approach by national competent authorities (NCAs) when assessing individual exercise of options and discretions, the ECB may adopt, pursuant to Article 4(3) of Regulation (EU) No 1024/2013, a recommendation on the specifications to be applied in the assessment of applications from less significant institutions.
- (5) A common set of specifications for the individual exercise of options and discretions is necessary, on the one hand, in order to promote consistency, effectiveness and transparency in the supervision of less significant institutions within the SSM and, on the other hand, to foster, where needed, equal treatment of significant and less significant institutions as well as a level playing field for all credit institutions across the participating Member States. At the same time, the principle of proportionality and the legitimate expectations of supervised credit institutions must be taken into account.
- (6) To this end, the ECB has identified some options and discretions among those included in the ECB Guide which would be appropriate to exercise in an identical manner in relation to significant institutions and less significant institutions. The ECB has further identified other options and discretions, among which are two options and discretions of a general nature provided for in Article 380 and Article 420(2) of Regulation (EU) No 575/2013, for whose exercise it recommends a specific approach in relation to less significant institutions.
- (7) With respect to the options and discretions related to consolidated supervision and waivers of prudential requirements, in line with the recommendations contained in Chapter 1 of Section II of the ECB Guide, NCAs should be encouraged to adopt a prudent approach when granting such waivers on an individual basis. With regard to liquidity waivers at the cross border level, the ECB recommends a specific approach for less significant institutions given that not all the specifications for the assessment of applications included in the ECB Guide are relevant for these institutions.

<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

<sup>(3)</sup> Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

- (8) There should be a consistent and prudent approach across the SSM regarding the options and discretions related to own funds and capital requirements, as set out in Chapters 2 and 3 of Section II of the ECB Guide, given that these supervisory decisions have an impact on the amount of available own funds and their quality. The same applies for Additional Tier 1 and Tier 2 instruments or minority interests that may be included in eligible own funds under certain conditions. Furthermore, to ensure a level playing field, the standardised approach, the internal ratings based approach, internal model method and internal model approach for the calculation of own funds requirements should be applied consistently to all credit institutions across the SSM. To this end also, the assessment of compliance with the requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>(1)</sup> to allow the application of a zero per cent risk weight for the calculation of own fund requirements for intra-group exposures should be based on a common set of specifications. However, the ECB has identified some options and discretions related to own funds and capital requirements for which a specific approach in relation to less significant institutions is necessary.
- (9) For the options and discretions concerning institutions that have entered into an institutional protection scheme, the use of a common set of specifications for the assessment of applications for prudential waivers, as set out in Chapter 4 of Section II of the ECB Guide, is recommended in order to attain supervisory consistency, given that institutional protection schemes typically comprise both significant and less significant institutions. However, with regard to holdings in institutions that fall within institutional protection schemes under Article 49(3) of Regulation (EU) No 575/2013, a specific approach in relation to less significant institutions is recommended to reduce the administrative burden on these institutions as much as possible.
- (10) With regard to compliance with the large exposures requirements, the approach set out in Chapter 5 of Section II of the ECB Guide in relation to significant institutions should be taken also in relation to less significant institutions to foster a prudent treatment of large exposures for all credit institutions within the SSM so that concentration risks are adequately managed and limited.
- (11) The ECB recommends a consistent and prudent approach with respect to the options and discretions related to liquidity requirements, as set out in Chapter 6 of Section II of the ECB Guide, as these options and discretions have an impact on the calculation of liquidity coverage ratio requirements, for example by specifying the treatment of specific inflows and outflows. Regarding the outflow rates for trade finance off-balance sheet related products NCAs may apply an outflow rate below 5 % if the applicable outflow rate has been calibrated based on statistical evidence.
- (12) As regards the exercise of the waiver for credit institutions permanently affiliated to a central body specified in Article 21(1) of Directive 2013/36/EU of the European Parliament and of the Council<sup>(2)</sup>, the approach set out in Chapter 8 of Section II of the ECB Guide is recommended in relation to less significant institutions to attain a level playing field.
- (13) With respect to the options and discretions related to governance arrangements and prudential supervision, a prudent and consistent approach, as set out in Chapter 11 of Section II of the ECB Guide, is recommended to promote that all credit institutions are subject to appropriate governance requirements. However, a specific approach in relation to less significant institutions with regard to the combination of risk committee and audit committee is considered appropriate in view of the principle of proportionality.
- (14) Furthermore, this Recommendation covers options and discretions relating to the cooperation between authorities, as smooth cooperation within the SSM needs to be ensured.
- (15) As regards bilateral agreements on the supervision of credit institutions in non-participating Member States pursuant to Article 115(2) of Directive 2013/36/EU, a specific approach is needed in relation to less significant institutions as this option is available for the competent authority that is responsible for the authorisations. According to Article 4(1)(a) and Article 9 of Regulation (EU) No 1024/2013, the ECB is exclusively competent within the SSM to authorise credit institutions and to withdraw authorisations of credit institutions, and therefore needs to be involved to establish bilateral agreements on the supervision of credit institutions in non-participating Member States,

<sup>(1)</sup> 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).

<sup>(2)</sup> 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).

HAS ADOPTED THIS RECOMMENDATION:

## PART ONE

### GENERAL PROVISIONS

#### I.

##### 1. Subject matter and scope

This Recommendation lays down principles for the exercise by NCAs of some options and discretions available in Union law in relation to less significant institutions.

##### 2. Definitions

For the purposes of this Recommendation, the definitions set out in Regulation (EU) No 1024/2013, Regulation (EU) No 468/2014 (ECB/2014/17), Regulation (EU) No 575/2013, Directive 2013/36/EU, and Commission Delegated Regulation (EU) 2015/61<sup>(1)</sup> apply.

## PART TWO

### OPTIONS AND DISCRETIONS FOR WHICH A SPECIFIC APPROACH FOR LESS SIGNIFICANT INSTITUTIONS IS RECOMMENDED

#### II.

##### Waivers of prudential requirements

##### 1. Article 8(3) of Regulation (EU) No 575/2013: liquidity waivers at cross border level

When examining applications for liquidity waivers at the cross border level, NCAs should assess compliance with all of the conditions set out in Article 8(1) and (3) of Regulation (EU) No 575/2013, applying the assessment specifications laid down in Section II, Chapter 1, paragraph 4 of the ECB Guide with the exception of the specifications for letter (b) of Article 8(3).

#### III.

##### Capital requirements

##### 1. Article 129(1) of Regulation (EU) No 575/2013: exposures in the form of covered bonds

With regard to exposures in the form of covered bonds, an NCA should coordinate with the ECB regarding the assessment of significant potential concentration problems in the participating Member State concerned, before deciding whether to partly waive the application of Article 129(1)(c) of Regulation (EU) No 575/2013 and allow credit quality step 2 for up to 10 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing institution.

##### 2. Article 311(2) of Regulation (EU) No 575/2013: treatment of exposures to central counterparties

2.1 An NCA should allow a credit institution to apply the treatment set out in Article 310 of Regulation (EU) No 575/2013 to its trade exposures and default fund contributions to a central counterparty where that central counterparty has notified the credit institution that it has stopped calculating  $K_{CCP}$  (hypothetical capital) as provided for in Article 311(1)(a) of Regulation (EU) No 575/2013.

2.2 For the purposes of paragraph 2.1, when assessing the validity of the reasons for which the central counterparty has stopped calculating  $K_{CCP}$  (hypothetical capital), NCAs should apply the conclusions reached by the ECB with respect to the same central counterparty in its verification of the reasons.

<sup>(1)</sup> 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).

### 3. **Article 380 of Regulation (EU) No 575/2013: waiver in case of system failure**

- 3.1 Where a system wide failure within the meaning of Article 380 of Regulation (EU) No 575/2013 occurs, as confirmed by an ECB public statement, and until the ECB issues a public statement that the situation referred to therein is rectified, the ECB should assess this failure and NCAs should apply the conclusions of the ECB's assessment and make use of the option provided for in Article 380 of Regulation (EU) No 575/2013. In such case:
- (a) credit institutions should not be required to comply with the own funds requirements laid down in Articles 378 and 379 of Regulation (EU) No 575/2013; and
  - (b) the failure of a counterparty to settle a trade should not be deemed a default for the purposes of credit risk.
- 3.2 If an NCA plans to issue a public statement confirming the event of a system wide failure within the meaning of Article 380 of Regulation (EU) No 575/2013, it should coordinate this with the ECB before publishing such statement.

## IV.

### **Institutional protection schemes**

1. **Article 49(3) of Regulation (EU) No 575/2013: deduction of holdings in institutions that fall within institutional protection schemes**
- 1.1 Where applications are made for permission not to deduct holdings of own funds instruments, NCAs should use the specifications laid down in Section II, Chapter 4, paragraph 4 of the ECB Guide to assess whether the conditions set out in Article 49(3) of Regulation (EU) No 575/2013 are met.
- 1.2 An NCA may allow an institutional protection scheme to submit an application for permission under Article 49(3) of Regulation (EU) No 575/2013 on behalf of all less significant institutions that are members of the scheme. In this case, the NCA may issue a decision granting the permission in accordance with Article 49(3) of Regulation (EU) No 575/2013 which applies to all the less significant institutions listed in the application.

## V.

### **Liquidity**

1. **Article 420(2) of Regulation (EU) No 575/2013: liquidity outflows**
- 1.1 Consistently with Article 11 of Regulation (EU) 2016/445, NCAs should determine a liquidity outflow rate of 5 % for trade finance off-balance sheet items, as referred to in Article 429 of Regulation (EU) No 575/2013 and in Annex I thereto, to be used by credit institutions in assessing liquidity outflows. An NCA should require credit institutions to report to it the corresponding outflows in accordance with Commission Implementing Regulation (EU) No 680/2014 <sup>(1)</sup>.
- 1.2 By derogation from paragraph 1.1, an NCA may determine an outflow rate below 5 % on the basis of statistical evidence for less significant institutions established in the Member State concerned.

## VI.

### **Prudential supervision**

1. **Article 76(3) of Directive 2013/36/EU: combining the risk committee and the audit committee**
- 1.1 With regard to less significant institutions (including credit institutions that are group subsidiaries) that are not considered significant within the meaning of Article 76(3) of Directive 2013/36/EU, NCAs should exercise the option to allow the combination of the risk and audit committees.
- 1.2 NCAs should carry out the assessment of significance within the meaning of Article 76(3) of Directive 2013/36/EU, in terms of the size, internal organisation and the nature, scope and complexity of the credit institution's activities, in accordance with the assessment specifications laid down in Section II, Chapter 11, paragraph 3 of the ECB Guide.
- 1.3 If national law transposing Directive 2013/36/EU already provides for criteria other than the specifications set out in Section II, Chapter 11, paragraph 3 of the ECB Guide, NCAs should apply the criteria laid down in national law.

<sup>(1)</sup> 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).

**2. Article 115(2) of Directive 2013/36/EU: bilateral agreement on the supervision of credit institutions in non-participating Member States**

2.1 Given the ECB's competence for the initial authorisation of credit institutions within the SSM and the NCAs' competence for the prudential supervision of less significant institutions, NCAs should notify the ECB of their intention to delegate their responsibility for the direct supervision of less significant institutions to the competent authority which authorised and supervises the parent undertaking of the less significant institution, or to assume responsibility for supervising the subsidiary credit institution authorised in another Member State. The ECB as competent authority responsible for authorising credit institutions will cooperate, together with the relevant NCA, in the establishment of a bilateral agreement for the delegation or assumption of supervisory responsibilities on behalf of the NCA responsible for the ongoing supervision of the parent or subsidiary within the participating Member States.

2.2 Paragraph 2.1 applies in the following situations:

- (a) an NCA is considering delegating its responsibility for direct supervision of a less significant institution to the NCA that authorised and supervises the parent undertaking; and
- (b) an NCA seeks or has been solicited, in its capacity as direct supervisor of a parent undertaking that is a credit institution, to assume responsibility for the supervision of a subsidiary credit institution authorised in another Member State.

PART THREE

**OPTIONS AND DISCRETIONS EXERCISED ON A CASE-BY-CASE BASIS FOR WHICH A COMMON APPROACH SHOULD BE TAKEN IN RELATION TO ALL CREDIT INSTITUTIONS**

**VII.**

The options and discretions to be exercised on a case-by-case basis for which a common approach should be taken in relation to significant and less significant institutions are set out in the Annex. NCAs should exercise these options and discretions in relation to less significant institutions in accordance with the reference table set out in the Annex.

PART FOUR

**FINAL PROVISION**

**VIII.**

**Final provision**

This Recommendation is addressed to the NCAs of participating Member States.

Done at Frankfurt am Main, 4 April 2017.

*The President of the ECB*

Mario DRAGHI

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## ANNEX

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
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**Consolidated supervision and waivers of prudential requirements**

Article 7(1), (2) and (3) of Regulation (EU) No 575/2013: capital waivers	Section II, Chapter 1 paragraph 3 of the ECB Guide
Article 8(1) and (2) of Regulation (EU) No 575/2013: liquidity waivers	Section II, Chapter 1 paragraph 4 of the ECB Guide
Article 9 of Regulation (EU) No 575/2013: individual consolidation method	Section II, Chapter 1 paragraph 5 of the ECB Guide
Article 10(1) and (2) of Regulation (EU) No 575/2013: waivers for credit institutions permanently affiliated to a central body	Section II, Chapter 1 paragraph 6 of the ECB Guide
Article 24(2) of Regulation (EU) No 575/2013: valuation of assets and off-balance sheet items – use of International Financial Reporting Standards for prudential purposes	Section II, Chapter 1 paragraph 8 of the ECB Guide

**Own funds**

Article 49(1) of Regulation (EU) No 575/2013: deduction of insurance holdings	Section II, Chapter 2 paragraph 4 of the ECB Guide
Article 49(2) of Regulation (EU) No 575/2013: deduction of holdings of financial sector entities	Section II, Chapter 2 paragraph 5 of the ECB Guide
Article 78(1)(b) of Regulation (EU) No 575/2013: reduction of own funds – excess capital margin requirement	Section II, Chapter 2 paragraph 6 of the ECB Guide
Article 78(3) of Regulation (EU) No 575/2013: reduction of own funds – mutuals, savings and cooperatives	Section II, Chapter 2 paragraph 7 of the ECB Guide
Article 83(1) of Regulation (EU) No 575/2013: waiver for additional Tier 1 and Tier 2 Instruments issued by a special purpose entity	Section II, Chapter 2 paragraph 9 of the ECB Guide
Article 84(5) of Regulation (EU) No 575/2013: minority interests included in consolidated Common Equity Tier 1 capital	Section II, Chapter 2 paragraph 10 of the ECB Guide

**Capital requirements**

Article 113(6) of Regulation (EU) No 575/2013: calculation of risk weighted exposure amounts – intragroup exposures	Section II, Chapter 3 paragraph 3 of the ECB Guide
Article 162(1) of Regulation (EU) No 575/2013: maturity of exposures	Section II, Chapter 3 paragraph 5 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Article 225(2) of Regulation (EU) No 575/2013: own estimate of volatility adjustments	Section II, Chapter 3 paragraph 7 of the ECB Guide
Article 243(2) and the second subparagraph of Article 244(2) of Regulation (EU) No 575/2013: significant risk transfer	Section II, Chapter 3 paragraph 8 of the ECB Guide
Article 283(3) of Regulation (EU) No 575/2013: implementation of the Internal Model Method	Section II, Chapter 3 paragraph 9 of the ECB Guide
Article 284(4) and (9) of Regulation (EU) No 575/2013: calculation of the exposure value for counterparty credit risk	Section II, Chapter 3 paragraph 10 of the ECB Guide
Article 311(3) of Regulation (EU) No 575/2013: market risk (exposures to central counterparties)	Section II, Chapter 3 paragraph 11 of the ECB Guide
Article 366(4) of Regulation (EU) No 575/2013: calculation of the value-at-risk number	Section II, Chapter 3 paragraph 12 of the ECB Guide

#### ***Institutional protection schemes***

Article 8(4) of Regulation (EU) No 575/2013: liquidity waiver for members of institutional protection schemes	Section II, Chapter 4 paragraph 3 of the ECB Guide
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#### ***Large exposures***

Article 396(1) of Regulation (EU) No 575/2013: compliance with large exposures requirements	Section II, Chapter 5 paragraph 3 of the ECB Guide
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#### ***Liquidity***

Article 422(8) of Regulation (EU) No 575/2013 and Article 29 of Delegated Regulation (EU) 2015/61: intragroup liquidity outflows	Section II, Chapter 6 paragraph 11 of the ECB Guide
Article 425(4) of Regulation (EU) No 575/2013 and Article 34 of Delegated Regulation (EU) 2015/61: intragroup liquidity inflows	Section II, Chapter 6, paragraph 15 of the ECB Guide
Article 8(1) of Delegated Regulation (EU) 2015/61: diversification of holdings of liquid assets	Section II, Chapter 6 paragraph 5 of the ECB Guide
Article 8(3)(c) of Delegated Regulation (EU) 2015/61: management of liquid assets	Section II, Chapter 6 paragraph 6 of the ECB Guide
Article 8(6) of Delegated Regulation (EU) 2015/61: currency mismatches	Section II, Chapter 6 paragraph 4 of the ECB Guide
Article 10(2) of Delegated Regulation (EU) 2015/61: haircuts on extremely high quality covered bonds	Section II, Chapter 6 paragraph 7 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Article 24(6) of Delegated Regulation (EU) 2015/61: multiplier for retail deposits covered by a deposit guarantee scheme	Section II, Chapter 6 paragraph 8 of the ECB Guide
Article 25(3) of Delegated Regulation (EU) 2015/61: higher outflow rates	Section II, Chapter 6, paragraph 9 of the ECB Guide
Article 26 of Delegated Regulation (EU) 2015/61: outflows with inter-dependent inflows	Section II, Chapter 6 paragraph 10 of the ECB Guide
Article 30(2) of Delegated Regulation (EU) 2015/61: additional collateral outflows from downgrade triggers	Section II, Chapter 6 paragraph 12 of the ECB Guide
Article 33(2) of Delegated Regulation (EU) 2015/61: cap on inflows	Section II, Chapter 6 paragraph 13 of the ECB Guide
Article 33(3)(4) and (5) of Delegated Regulation (EU) 2015/61: specialised credit institutions	Section II, Chapter 6 paragraph 14 of the ECB Guide

#### **Leverage**

Article 429(7) of Regulation (EU) No 575/2013: exclusion of intragroup exposures from the calculation of the leverage ratio	Section II, Chapter 7 paragraph 3 of the ECB Guide
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#### **General requirements for access to the activity of credit institutions**

Article 21(1) of Directive 2013/36/EU: waiver for credit institutions permanently affiliated to a central body	Section II, Chapter 9 paragraph 1 of the ECB Guide
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#### **Governance arrangements and prudential supervision**

Article 88(1) of Directive 2013/36/EU: combining the functions of the chairman and CEO	Section II, Chapter 11 paragraph 4 of the ECB Guide
Article 91(6) of Directive 2013/36/EU: additional non-executive directorship	Section II, Chapter 11 paragraph 5 of the ECB Guide
Article 108(1) of Directive 2013/36/EU: internal capital adequacy assessment process for credit institutions permanently affiliated to a central body	Section II, Chapter 11 paragraph 7 of the ECB Guide
Article 111(5) of Directive 2013/36/EU: supervision of financial holding companies or mixed financial holding companies with part of the group in non-participating Member States	Section II, Chapter 11 paragraph 8 of the ECB Guide
Articles 117 and 118 of Directive 2013/36/EU: cooperation obligations	Section II, Chapter 11 paragraph 10 of the ECB Guide
Article 142 of Directive 2013/36/EU: capital conservation plans	Section II, Chapter 11 paragraph 13 of the ECB Guide