POSITION PAPER

ESBG response to the ECB consultation on the revisions to options and discretions policies

ESBG (European Savings and Retail Banking Group)

Rue Marie-Thérèse, 11 - B-1000 Brussels

ESBG Transparency Register ID 8765978796-80

August 2021

ESBG

Thank you for giving us the opportunity to comment on the ECB public consultation on the updates to options and discretions policies published in July 2021. Our comments and concerns are provided below and we hope you will find those useful and relevant.

ECB Guide:

- **Section II, Chapter 1, Number 8, Consolidation (Art. 18 (7) CRR), p. 20 -** *Deletion / Amendment* :

For the application to use a consolidation method other than the equity method, the ECB requires, inter alia, "(ii) a qualitative and quantitative assessment of the alleged inadequate representation of the risks or disproportionate effort in applying the equity method" and "(iii) evidence that the alternative approach results in a treatment as conservative as that resulting from applying the equity method".

ESBG assumes that such requests are usually made for investments with very small and immaterial book values in relation to the parent company. In this respect, we consider the effort resulting from the ECB's requirements to be disproportionate, as this would mean that the institutions would have to regularly determine the equivalence method (which they actually want to avoid) in order to provide the required evidence.

Institutions that have already received exemption approval for the old portfolio as of the reporting date of 31 December 2020 will hardly be able to prove the (qualitatively and quantitatively) disproportionate effort of applying the equivalence method in the application for newly acquired participations that are immaterial in terms of amount.

Hence, ESBG suggests deleting this requirement. Alternatively, and in order to keep the operational effort from such an application low both on the part of the banks but also on the part of the supervisor, we propose limiting the detailed requirements to cases where the sum of the relevant book values reaches a size that is relevant for the group.

- **Section II, Chapter 1; Number 9, Exclusion from Consolidation (Art. 19 (2) CRR), p. 20 –** *Amendment:*

Chapter 1, para. 9, p. 20, our view goes beyond the framework prescribed in the CRR:

"In this respect, institutions, financial institutions or ancillary services undertakings which are a subsidiary or an undertaking in which a participation is held may be considered of negligible interest only with respect to the objectives of monitoring institutions when institutions are able to provide strong evidence of such negligible interest on the basis of a comprehensive assessment of all the risks stemming from these entities, and the ECB decides on a case-by-case basis that their exclusion from the scope of prudential consolidation does not and is not expected to affect the monitoring of institutions on a consolidated basis."

In our opinion, Art. 19 para. 2 CRR does not provide that an exemption can only be granted if an entity is negligible with regard to all risks at the same time, because otherwise Art. 18 CRR would already not provide for a distinction in the regulatory consolidation.

We therefore propose to delete the wording "... of all the risks stemming from these entities..." and to include a wording in the sense of ".... of the relevant risks regards to the waiver an institution is applying for".

The wording in the next sentence of the draft "In the exceptional case that the ECB permits the exclusion of a subsidiary or of an entity in which a participation is held from the scope of consolidation, ..." is also not covered by the regulatory text in our opinion. The possibility to apply for an exemption according to Art. 19 (2) CRR is in no way inferior to other options provided for in the CRR.

Under commercial law (nGAAP), insignificant participations are generally exempted from the consolidation requirement. In the case of larger institutions, these exemptions quickly exceed a total amount of EUR 10 million, up to which non-inclusion would be permissible under Article 19(1) CRR even without a case-by-case decision. This makes it necessary to apply for individual case decisions for a large number of participations with very low book values in each case.

We assume that divergence should only occur where absolutely necessary. In this respect, we ask the ECB not to generally classify the case-by-case decision under Article 19(2) CRR as an exceptional case, but to consider this as a regular process.

We therefore suggest deleting the word "...exceptional ...".

The requirements of Art. 18 CRR lead to a distinction of the regulatory scope of consolidation for the purposes of solvency, large exposures, leverage ratio on the one hand, and for liquidity purposes (Part 6 CRR) on the other hand. In order to meet the requirements of Part 6 CRR, the companies listed in paragraphs 3 to 6 of Art. 18 (1) CRR are not to be taken into account. Thus, individual companies may be excluded from the regulatory scope of consolidation for liquidity purposes, while they are taken into account in the regulatory scope of consolidation for e.g. solvency or large exposure purposes.

Furthermore, it should also be noted that via the existing options of Art. 7 and Art. 8 CRR, distinctions are indeed made in the fulfilment of the requirements for solvency, large exposures and leverage ratio as well as for liquidity purposes.

Against the background of the different risks and the different data and process requirements for fulfilling the respective requirements (book values vs. cash flow information in the case of the LCR and AMM), we consider a different treatment of liquidity and other risks to be reasonable in principle.

- **Section II, Chapter 4, Number 5 (3) (iii), p. 35** – *Deletion*:

While in the English version the part is still the same ("clear commitment"), it was changed in the German version (previously "eindeutig zugesagt", now "eindeutig verpflichtet").

There is no reason to adjust the wording in the German version while it remains unchanged in the English version.

Hence, we suggest leaving the translation unchanged as well.

- **Liquidity waivers (Article 8 of the CRR)** – *Amendment:*

On what refers to: "iii) a confirmation from the relevant national competent authority that the national liquidity and/or funding provisions, where applicable, do not contain material practical or legal impediments to the fulfilment of the contract; "

We believe tt should not be provided by the entity requesting the waiver but by communication between competent authorities (as it is usually done). That instead of a waiver request by the CEO it should be allowed to be requested by someone with sufficient powers/qualification.

- **Section II, Chapter 1.4. Liquidity waivers (page 13)** – *Deletion*:

We suggest deleting of the following paragraph: "(i) The ECB intends to exclude liquidity reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of cases where all the credit institutions that form a liquidity sub-group are located in the same Member State."

Where a liquidity waiver has been granted, we do not understand the need to systematically maintain liquidity reporting requirement. Though CRR envisages that liquidity requirements could be waived only partially, this should be substantiated with reasons that would be specific to limited circumstances:

- In general, liquidity requirements, including liquidity reporting requirements, should be waived in full.
- It should also be clarified that the waivers that have been already granted in full should not be modified to introduce individual liquidity reporting requirements.
- When liquidity sub-groups are modified or for new sub-groups, this should also be the case.

Keeping in place liquidity reporting requirements at solo level would be contrary to the proportionality principle and contrary to the waiver principle itself. This paragraph would mitigate the full benefits of the waiver and maintain the liquidity reporting burden for European banks for entities that would be waived from liquidity requirements as they are included in liquidity sub-groups.

The systematic denial of waiving individual liquidity reporting requirements would contradict the objective of the waiver and would maintain the reporting burden for European banks in a context where a liquidity waiver has been granted.Consistency of ECB additional criteria regarding waiver liquidity requirements, i.e. across LCR and NSFR.

- **Section II, Chapter 3.4. Maturity of exposures (CRR art 162) (page 29) –** *Amendment:*

Considering the coming changes regarding the usage of internal models, we expect the IRB-F portfolio to expand, in particular for short term intra-bank exposure, and also more flexibility in the roll-out expectations. We also note the EBA support for a change in level 1 text. Therefore we ask the SSM to allow the utilisation of the effective maturity for IRB-F.

Increasing volumes of IRB-F exposures in the context fo Basell 3 transposition.

ECB-Guideline:

Art. 6 lit d in conjunction with Annex II – *Amendment:*

The CRR does not define the term "cash clearing operations" used in Art. 400 para. 2 lit d CRR in more detail. A narrow definition of the term via the ECB Regulation or the ECB Guideline on O&Ds should be rejected. The functions mentioned under No. 2 in letters a to d should be understood as exemplary, with no requirement to meet them cumulatively. Therefore, it should be clarified that the wording "including, but not limited to the following" is to be understood in this sense. We also understand the addition "but not limited to the following" to mean that it is also sufficient for the use of the exemption for network-structured institutions if the legal basis of the regional or central institution provides for the assumption of the central bank function for the institutions affiliated to the network and the liquidity of its members is ensured via the statutes of the institutional protection scheme.

The same applies with respect to ECB-Regulation, Art. 9 para. 4 in conjunction with Annex II of that regulation.

About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to inno[1]vate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Our transparency ID is 8765978796-80.

European Savings and Retail Banking Group – aisbl
Rue Marie-Thérèse, 11 ▪ B-1000 Brussels ▪ Tel: +32 2 211 11 11 ▪ Fax : +32 2 211 11 99
Info@wsbi-esbg.org ▪ www.wsbi-esbg.org

Published by ESBG. August 2021