

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 5 February 2018

To less significant institutions within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013

## CIRCULAR CSSF 18/682

**Re : Adoption of the Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9) and of the 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)**

Ladies and Gentlemen,

The purpose of this circular is to draw attention to the entry into force of:

- the Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9)<sup>1</sup> (“**Guideline**”);
- the 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)<sup>2</sup> (“**Recommendation**”).

This circular relates exclusively to the exercise of options and discretions regarding less significant institutions within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013<sup>3</sup> (“**SSM Regulation**”). The CSSF hereby informs the institutions concerned

<sup>1</sup>The Guideline is annexed to this circular. It is also available at [https://www.ecb.europa.eu/ecb/legal/pdf/celex\\_32017o0009\\_en\\_txt.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/celex_32017o0009_en_txt.pdf)

<sup>2</sup> The Recommendation is annexed to this circular. It is also available at: [https://www.ecb.europa.eu/ecb/legal/pdf/ond\\_lsi\\_recommendation\\_201704.en.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/ond_lsi_recommendation_201704.en.pdf)

<sup>3</sup> Council Regulation (EU) n° 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

that it intends to comply with the Guideline and the Recommendation as of 1 January 2018, except for Article 7 of the Guideline which applies from 1 January 2019.

The provisions of the Guideline and of the Recommendation do not affect the provisions of CSSF Regulation N°14-01 on the implementation of certain discretions of Regulation (EU) No 575/2013 (“**CSSF Regulation 14-01**”).

As such, with respect to the exemption to the large exposure limitation, the CSSF will continue to make use, as provided in Article 6(f) of the Guideline, of:

- the national discretion of Article 493(3)(c) of Regulation (EU) No 575/2013 (“**CRR**”)<sup>4</sup> which is made use of in Article 56-1 of the Law of 5 April 1993 on the financial sector regarding group exemption relating to large exposures;
- the other national discretions of Article 493(3) of the CRR which are made use of in Article 19 of CSSF Regulation 14-01.

This CSSF circular shall apply with immediate effect.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Jean-Pierre FABER  
Directeur

Françoise KAUTHEN  
Directeur

Claude SIMON  
Directeur

Simone DELCOURT  
Directeur

Claude MARX  
Directeur général

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<sup>4</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.

Annexes:

Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9)

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)

# GUIDELINES

## GUIDELINE (EU) 2017/697 OF THE EUROPEAN CENTRAL BANK

of 4 April 2017

**on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9)**

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 6(1), and Article 6(5)(a) and (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. The ECB may issue guidelines to national competent authorities (NCAs), in accordance with which supervisory tasks are to be performed and supervisory decisions are to be adopted by NCAs.
- (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 under Regulation (EU) No 1024/2013, the ECB has exercised a number of options and discretions available in Union law under Regulation (EU) 2016/445 of the European Central Bank (ECB/2016/4) <sup>(3)</sup> for credit institutions that are classified as significant.
- (4) Although NCAs are primarily responsible for exercising the relevant options and discretions in relation to less significant institutions, the ECB's overarching oversight role within the SSM enables it to promote the consistent exercise of options and discretions in relation to both significant and less significant institutions, where appropriate. This ensures that: (a) the prudential supervision of all credit institutions in the participating Member States is implemented in a coherent and effective manner; (b) the single rulebook for financial services is applied consistently to all credit institutions in the participating Member States; and (c) that all credit institutions are subject to supervision of the highest quality.
- (5) With the aim of balancing the need for the consistent application of supervisory standards between significant and less significant institutions on the one hand with the application of the principle of proportionality on the other hand, the ECB has identified certain options and discretions among those it exercised in Regulation (EU) 2016/445 (ECB/2016/4) which should be exercised in the same way by NCAs in the supervision of less significant 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).

- (6) Options and discretions granted to competent authorities with reference to own funds and capital requirements under Article 89(3), Article 178(1)(b) and Article 282(6) of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup>, as well as under the transitional provisions provided for in Article 471(1) and Article 478(3)(a) and (b) of the same Regulation, have an impact on the level and quality of regulatory own funds and the capital ratios of less significant institutions. A prudent and consistent application of these options and discretions is necessary for several reasons. It will ensure that: (a) the risks related to qualifying holdings outside the financial sector are adequately addressed; (b) the definition of default is used in a consistent manner with regard to the adequacy and comparability of own funds requirements; and (c) that own funds requirements for transactions with a non-linear risk profile or for payment legs and transactions with debt instruments as underlying for which the institution cannot determine the delta or the modified duration are calculated in a prudent way. The harmonised application of transitional provisions related to the deduction of equity holdings in insurance companies and deferred tax assets will ensure that the more rigorous definition of regulatory capital introduced by Regulation (EU) No 575/2013 is implemented by all credit institutions in the participating Member States within an adequate period of time.
- (7) Options and discretions in relation to the exemption of exposures from the application of the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013 should be consistently applied to both significant institutions and less significant institutions to establish a level playing field for credit institutions in the participating Member States, limit concentration risks arising from specific exposures, and ensure that the same minimum standards are applied across the SSM for the assessment of compliance with the conditions specified in Article 400(3) of the same Regulation. In particular, concentration risks arising from covered bonds falling within the terms of Article 129(1), (3) and (6) of Regulation (EU) No 575/2013 and exposures to or guaranteed by regional governments or local authorities of Member States, where those claims would be assigned a 20 % risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013, should be limited. For intragroup exposures, including participations or other kinds of holdings, it needs to be ensured that the decision to fully exempt these exposures from the application of the large exposure limits is based on a thorough assessment as specified in Annex I to Regulation (EU) 2016/445 (ECB/2016/4). The application of common criteria for the assessment of whether an exposure, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network, meets the conditions for an exemption from the large exposure limits as specified in Annex II to Regulation (EU) 2016/445 (ECB/2016/4) is warranted. Such application should ensure that significant and less significant institutions associated in the same network are treated in a consistent way. The exercise of the option provided for in Article 400(2) of Regulation (EU) No 575/2013 as set out in this Guideline should only apply if the relevant Member State has not exercised the option provided for in Article 493(3) of Regulation (EU) No 575/2013.
- (8) Options and discretions granted to competent authorities under Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61 <sup>(2)</sup> for the calculation of outflows from stable retail deposits covered by a deposit guarantee scheme (DGS) in order to calculate liquidity coverage requirements should be consistently exercised for significant and less significant institutions in order to ensure identical treatment of credit institutions in the same DGS,

HAS ADOPTED THIS GUIDELINE:

#### CHAPTER I

### GENERAL PROVISIONS

#### Article 1

### Subject matter and scope

This Guideline specifies certain of the options and discretions of general application conferred on competent authorities under Union law concerning prudential requirements, the exercise of which by the NCAs in relation to the less significant institutions shall be fully aligned to the ECB's exercise of the relevant options and discretions in Regulation (EU) 2016/445 (ECB/2016/4).

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

*Article 2***Definitions**

For the purposes of this Guideline, the definitions contained in Article 4 of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013, Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) and Article 3 of Delegated Regulation (EU) 2015/61 shall apply.

## CHAPTER II

**EXERCISE OF OPTIONS AND DISCRETIONS IN RELATION TO LESS SIGNIFICANT INSTITUTIONS  
REQUIRING FULL ALIGNMENT WITH THE LAW APPLICABLE TO SIGNIFICANT INSTITUTIONS**

## SECTION I

## Own funds

*Article 3***Article 89(3) of Regulation (EU) No 575/2013: risk weighting and prohibition of qualifying holdings outside the financial sector**

Without prejudice to Article 90 of Regulation (EU) No 575/2013 and for the purpose of calculating the capital requirements in accordance with Part Three of Regulation (EU) No 575/2013, NCAs shall require less significant institutions to apply a risk weight of 1 250 % to the greater of the following:

- (a) the amount of qualifying holdings in undertakings referred to in Article 89(1) of Regulation (EU) No 575/2013 in excess of 15 % of the eligible capital of the credit institution; and
- (b) the total amount of qualifying holdings in undertakings referred to in Article 89(2) of Regulation (EU) No 575/2013 that exceeds 60 % of the eligible capital of the credit institution.

## SECTION II

## Capital requirements

*Article 4***Article 178(1)(b) of Regulation (EU) No 575/2013: default of an obligor**

NCAs shall require less significant institutions to apply the 'more than 90 days past due' standard for the categories of exposures specified in Article 178(1)(b) of Regulation (EU) No 575/2013.

*Article 5***Article 282(6) of Regulation (EU) No 575/2013: hedging sets**

For the transactions referred to in Article 282(6) of Regulation (EU) No 575/2013, NCAs shall require less significant institutions to use the mark-to-market method set out in Article 274 of Regulation (EU) No 575/2013.

## SECTION III

## Large exposures

*Article 6***Article 400(2) of Regulation (EU) No 575/2013: exemptions**

NCAs shall exercise the option with regard to exemptions provided for in Article 400(2) of Regulation (EU) No 575/2013 in relation to less significant institutions in accordance with this Article and the Annex.

- (a) The exposures listed in Article 400(2)(a) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of the nominal value of the covered bonds, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.
- (b) The exposures listed in Article 400(2)(b) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of their exposure value, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.
- (c) The exposures listed in Article 400(2)(d) of Regulation (EU) No 575/2013 shall be exempted in full from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in the Annex to this Guideline, are fulfilled.
- (d) The exposures listed in Article 400(2)(e) to (k) of Regulation (EU) No 575/2013 shall be exempted in full, or in the case of Article 400(2)(i) they shall be exempted up to the maximum allowed amount, from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.
- (e) NCAs shall require less significant institutions to assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as in the Annex to this Guideline applicable to the specific exposure, are fulfilled. The NCA may verify this assessment at any time and request less significant institutions to submit the documentation referred to in the Annex for this purpose.
- (f) 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.

## SECTION IV

## Liquidity

*Article 7***Article 24(4) and (5) of Delegated Regulation (EU) 2015/61: outflows from stable retail deposits**

NCAs shall require less significant institutions to multiply by 3 % the amount of stable retail deposits covered by a deposit guarantee scheme as referred to in Article 24(4) of Delegated Regulation (EU) 2015/61, provided that the Commission has given its prior approval in accordance with Article 24(5) of that Delegated Regulation certifying that all the conditions of Article 24(4) have been fulfilled.

## SECTION V

## Transitional provisions of Regulation (EU) No 575/2013

*Article 8***Article 471(1) of Regulation (EU) No 575/2013: exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items**

1. During the period from 1 January to 31 December 2018, NCAs may permit less significant institutions not to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies from Common Equity Tier 1 items in accordance with Article 471(1) of Regulation (EU) No 575/2013.

2. From 1 January 2019, NCAs shall require less significant institutions to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies from Common Equity Tier 1 items.
3. This Article applies without prejudice to decisions taken by the NCAs pursuant to Article 49(1) of Regulation (EU) No 575/2013.

#### Article 9

#### **Article 478(3)(a) and (b) of Regulation (EU) No 575/2013: applicable percentages for deduction from Common Equity Tier 1 items of significant investments in financial sector entities and deferred tax assets that rely on future profitability**

NCAs shall exercise the option with regard to the applicable percentages for deduction from Common Equity Tier 1 items of significant investments in financial sector entities and deferred tax assets that rely on future profitability provided for in Article 478(3)(a) and (b) of Regulation (EU) No 575/2013 as follows:

- (a) for the purposes of Article 478(1) of Regulation (EU) No 575/2013, the applicable percentage for the purposes of Article 469(1)(a) and (c) of that Regulation shall be 100 % from 1 January 2018;
- (b) for the purposes of Article 478(2) of Regulation (EU) No 575/2013, the applicable percentage shall be 100 % from 1 January 2018;
- (c) by way of derogation from point (b), where, pursuant to Article 478(2) of Regulation (EU) No 575/2013, national law provides for a 10-year phase-out period, the applicable percentage shall be:
  - (i) 80 % during the period from 1 January to 31 December 2018; and
  - (ii) 100 % from 1 January 2019;
- (d) NCAs shall not apply points (b) and (c) to less significant institutions which, on the date on which this Guideline takes effect, are subject to restructuring plans approved by the Commission;
- (e) where a credit institution falling within the scope of point (d) is acquired by or merges with another credit institution while the restructuring plan is still in operation without modification concerning the prudential treatment of deferred tax assets, NCAs shall apply the exception in point (d) to the acquiring credit institution, new credit institution resulting from the merger or credit institution incorporating the original credit institution, to the same extent that it applied to the acquired, merged or incorporated credit institution;
- (f) in the event of an unforeseen increase in the impact of the deductions provided for in points (b) and (c) which the NCA determines is material, less significant institutions shall be allowed not to apply points (b) or (c);
- (g) where points (b) and (c) do not apply, NCAs shall require less significant institutions to apply national legislative provisions;

This Article is without prejudice to national law existing prior to the date on which this Guideline takes effect, provided that such law sets percentages that are higher than those specified in points (a) to (c).

#### CHAPTER III

#### FINAL PROVISIONS

#### Article 10

#### **Taking effect and implementation**

1. This Guideline shall take effect on the day following that of its publication in the *Official Journal of the European Union*.



2. The NCAs shall comply with this Guideline from 1 January 2018, except for Article 7 which they shall comply with from 1 January 2019.

*Article 11*

**Addressees**

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

Done at Frankfurt am Main, 4 April 2017.

*For the Governing Council of the ECB*  
*The President of the ECB*  
Mario DRAGHI

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## ANNEX

**Conditions for assessing an exemption from the large exposure limit, in accordance with Article 400(2)(d) of Regulation (EU) No 575/2013 and Article 6(c) of this Guideline**

1. NCAs shall require less significant institutions to take the following criteria into account when assessing whether an exposure referred to in Article 400(2)(d) of Regulation (EU) No 575/2013 meets the conditions for an exemption from the large exposure limit, in accordance with Article 400(3) of Regulation (EU) No 575/2013.
  - (a) for the purpose of assessing whether the specific nature of the exposure, the regional or central body or the relationship between the credit institution and the regional or central body eliminate or reduce the risk of the exposure, as provided for in Article 400(3)(a) of Regulation (EU) No 575/2013, less significant institutions must take into account whether:
    - (i) there are any current or anticipated material practical or legal impediments that would hinder the timely repayment of the exposure by the counterparty to the credit institution, other than in the event of a recovery or resolution situation, when the restrictions outlined in Directive 2014/59/EU of the European Parliament and of the Council <sup>(1)</sup> are required to be implemented;
    - (ii) the proposed exposures are in line with the credit institution's ordinary course of business and its business model or justified by the funding structure of the network;
    - (iii) the process by which a decision is made to approve an exposure to the credit institution's central body, and the monitoring and review process applicable to such exposures, at individual level and at consolidated level, where relevant, are similar to those that are applied to third-party lending;
    - (iv) the credit institution's risk management procedures, IT system and internal reporting enable it to continuously check and ensure that the large exposures to its regional or central body are compatible with its risk strategy;
  - (b) for the purpose of assessing whether any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Article 81 of Directive 2013/36/EU of the European Parliament and of the Council <sup>(2)</sup>, as provided for in Article 400(3)(b) of Regulation (EU) No 575/2013, less significant institutions must take into account whether:
    - (i) the credit institution has robust processes, procedures and controls to ensure that use of the exemption would not result in concentration risk which is outside its risk strategy;
    - (ii) the credit institution has formally considered the concentration risk arising from exposures to its regional or central body as part of its overall risk assessment framework;
    - (iii) the credit institution has a risk control framework that adequately monitors the proposed exposures;
    - (iv) the concentration risk arising has been or will be clearly identified in the credit institution's internal capital adequacy assessment process (ICAAP) and will be actively managed. The arrangements, processes and mechanisms to manage the concentration risk will be assessed in the supervisory review and evaluation process.
2. In addition to the conditions set out in paragraph 1, NCAs shall require less significant institutions to take into account, for the purpose of assessing whether the regional or central body with which the credit institution is associated in a network is responsible for cash-clearing operations, as provided for in Article 400(2)(d) of Regulation (EU) No 575/2013, whether the by-laws or articles of association of the regional or central body explicitly contain such responsibilities, including, but not limited to the following:
  - (a) market funding for the whole network;

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

<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).

- (b) clearing liquidity within the network, within the scope of Article 10 of Regulation (EU) No 575/2013;
  - (c) providing liquidity to affiliated credit institutions;
  - (d) absorbing excess liquidity of affiliated credit institutions.
3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, NCAs may request less significant institutions to submit the following documentation.
- (a) a letter signed by the credit institution's legal representative, with approval from the management body, stating that the credit institution complies with all the conditions laid down in Article 400(2)(d) and Article 400(3) of Regulation (EU) No 575/2013 for an exemption to be granted;
  - (b) a legal opinion, issued either by an external independent third party or by an internal legal department, and approved by the management body, demonstrating that there are no obstacles that would hinder the timely repayment of exposures by a regional or central body to the credit institution arising from either applicable regulations, including fiscal regulations, or binding agreements;
  - (c) a statement signed by the legal representative and approved by the management body that:
    - (i) there are no practical impediments to the timely repayment of exposures by a regional or central body to the credit institution;
    - (ii) the regional or central body exposures are justified by the funding structure of the network;
    - (iii) the process by which a decision is made to approve an exposure to a regional or central body and the monitoring and review process applicable to such exposures, at legal entity level and at consolidated level, are similar to those applied to third-party lending;
    - (iv) the concentration risk arising from exposures to the regional or central body has been considered as part of the credit institution's overall risk assessment framework;
  - (d) documentation signed by the legal representative and approved by the management body attesting that the credit institution's risk evaluation, measurement and control procedures are the same as the regional or central body's and that the credit institution's risk management procedures, IT system and internal reporting enable the management body to continuously monitor the level of the large exposure and its compatibility with the credit institution's risk strategy at legal entity level and at consolidated level, where relevant, and with the principles of sound internal liquidity management within the network;
  - (e) documentation showing that the ICAAP clearly identifies the concentration risk arising from the large exposures to the regional or central body and that this is actively managed;
  - (f) documentation showing that the management of concentration risk is consistent with the network's recovery plan.
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EUROPEAN CENTRAL BANK

EUROSYSTEM

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## 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)

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.

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1 OJ L 287, 29.10.2013, p. 63.

2 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).

3 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).

- (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.
- (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>4</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.

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4 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).

- (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>5</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,

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5 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>6</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

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<sup>6</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).

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.

**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>7</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.

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<sup>7</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.

[signed]

*The President of the ECB*

Mario DRAGHI

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
<b><i>Consolidated supervision and waivers of prudential requirements</i></b>	
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
<b><i>Own funds</i></b>	
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

<b>Legal basis of the option and/or discretion</b>	<b>Approach recommended: consistency with the policy on options and discretions for significant institutions</b>
<b><i>Capital requirements</i></b>	
Article 113(6) of Regulation (EU) No 575/2013: calculation of risk weighted exposure amounts – intra-group 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
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
<b><i>Institutional protection schemes</i></b>	
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
<b><i>Large exposures</i></b>	
Article 396(1) of Regulation (EU) No 575/2013: compliance with large exposures requirements	Section II, Chapter 5 paragraph 3 of the ECB Guide
<b><i>Liquidity</i></b>	
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

<b>Legal basis of the option and/or discretion</b>	<b>Approach recommended: consistency with the policy on options and discretions for significant institutions</b>
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
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
<b>Leverage</b>	
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

<b>Legal basis of the option and/or discretion</b>	<b>Approach recommended: consistency with the policy on options and discretions for significant institutions</b>
<b><i>General requirements for access to the activity of credit institutions</i></b>	
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
<b><i>Governance arrangements and prudential supervision</i></b>	
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