Draft Addendum to the ECB Guide on Options and Discretions (O&Ds) available in Union law

EACB Draft Comment Paper (to be transposed into ECB form)

Issue	Article	Comment (Amendment, Clarification, Deletion)	Concise Statement why your comment should be taken on board
Calculation of risk-weighted exposure amounts (Art. 113(6) CRR	Chapter 3, point 3	Clarification	With respect to the principle of stability and continuity of law (as stated by the ECB in the explanatory note of the draft addendum to the ECB Guide), we would like to underline the legitimate expectations of credit institutions must be considered for maintaining authorizations previously granted by national authorities. We welcome the indication provided by the ECB during the public hearing that the guidance specified in the draft Guide would not affect standing authorizations granted in the past by national authorities. We believe it is of primal importance that the new policy does not invalidate waivers in place, as this would have disruptive effects on stability and capital planning and management of institutions. We understand that in the future the JSTs would nevertheless look at specific cases to see whether the new policy conflicts with waivers granted. Where the JSTs see relevant conflicts they would always discuss the case with institutions in the first place without impairing previous decisions. Moreover, in order to ensure level playing field, we believe that specifying much stricter criteria than those applied in the past for granting the waiver would disproportionately affect newly applying institutions and should thus be avoided.
Calculation of risk-weighted exposure amounts (Art.	Chapter 3, point 3	Amendment	The documentation requirements will impose an excessive administrative burden on applying institutions. We believe that a simplification of the legal documentation is necessary. Indeed, examples are the legal opinion demanded under point (vii) and the duplication of declarations

113(6) CRR			by the legal representatives of the institutions required under point (vi) and (viii).
Calculation of risk-weighted exposure amounts (Art. 113(6) CRR	Chapter 3, point 3	Clarification	We also have difficulty understanding the concrete proposals of what would be referred with "no significant obstacle, current or foreseen the rapid transfer of own funds or repayment of liabilities from the counterparty to the institution" in the case of subsidiaries established in the same country and controlled at 100%. We believe that such conditions would be met by definition for such undertakings.
Capital waivers (Art. 7 CRR)	Chapter 1, point 3	Clarification	We understand that also existing capital waivers remain valid. This was clearly indicated by the ECB at the public hearing in December 2015 and in the Feedback statement from March 2016 (page 12 D.3.1 number 41). In this respect, we believe that existing waivers that allow group regulatory reporting (e.g. concerning Capital Waiver (Chapter 1 - 3.), exclusion of intragroup exposures (Chapter 1 -4.) and calculation of RWA (Chapter 3 – 3.)) also remain valid and that additional reporting for each credit institute is not necessary.
Exclusion of intragroup exposures from the calculation of the leverage ratio (Art. 429(7) CRR as introduced by Delegated Regulation 2015/62)	Chapter 1, point 4	Clarification	Given the criteria being specified in the draft Guide, we understand that the applications for such exemptions will now be processed. We do not believe that a direct connection should be established between the exclusion of intragroup exposures for the leverage ratio and the granting the 0% risk weight under Art. 113(6), as done in subpara. 3 and 4 (pag. 3 and 4). The text of Article 113 (6) CRR is indeed very precise about the various conditions which need to be fulfilled to grand a zero risk weighting, from which it needs to be concluded that the list of conditions which it puts forward is meant to be exhaustive. Leverage is neither directly nor indirectly mentioned in Article 113 (6) CRR. Indeed, the CRR does not impose an assessment of the leverage ratio as a condition for granting capital waivers and for applying a 0% risk weight, and vice versa. In addition. the leverage ratio is to become a prudentially binding requirement as of 2018, thus a leverage assessment seems difficult to be carried out until that date. Finally, it should be given proper consideration to the specific situation of banking groups made up by local (often small) co-operative banks and their central institutions, whereby the former do not have a direct access with the Central Bank and the payment and settlement systems and capital/money markets. Thus, the central institutions perform central bank refinancing operations and other secured funding transactions on behalf of the local co-operative banks.
Cap on inflows (Art. 33(2) LCR	Chapter 5, point	Clarification	Also in this case we believe it is of key importance to clarify that the guidance provided in the addendum will not be applied retroactively to situations which are under instruction and that

delegated act)	14		exemptions which have been granted in the past will not be affected. We would also like to reiterate that applying much more severe criteria than those followed in the past by NCAs would unduly affect institutions presenting the application in the future to the ECB. We would also welcome a clarification that guidance would, at this moment in time, only apply to SIs, and that the feeding it into the processes of the NCAs over the time is prepared over an adequate time frame. Moreover, we do not believe that "under certain conditions the exercise of this specific option on liquidity requirements, when considered in combination with the option in Article 34 of Commission Delegated Regulation (EU) 2015/61 […] could, from the liquidity receiving entity's perspective, produce a comparable effect to an Article 8 CRR waiver" (page 8). In fact, under a waiver, the entity would only need to report its LCR and not be required to fully comply with the 100% requirement. Which is not the case for the provision regarding the cap on inflows. Indeed, the inflow cap would mean that a 25% liquidity buffer has to be maintained also when within groups/networks the maturities and funding structures are fully matched. For institutions that are affiliated in an IPS and in cooperative groups the high stability of the network/group is grounded also in the division of tasks in relation to liquidity management with a direct and stable retail funding granted by local banks and a managing/balancing function of the central institutions. This business model requires a high degree of composite internal deposits, which guarantees the reliability of the network and is recognized in Recital 16 and Art. 33(2) of the LCR delegated act. This recognition should be maintained in its present form, with no need for further limitations. Moreover, formal decisions and administrative acts which have already been adopted should also remain valid and be safeguarded by grandfathering arrangements (e.g. collective decrees concerning the German network of cooperative banks issued by the Federal Financial Supervisory Authority (BaFin) on 2 November 2015). In addition, an appropriate material threshold (e.g. in terms of the amount of the intragroup inflows to total outflows ratio) could even be foreseen below which the cap is assumed waived even before an application process takes place.
Cap on inflows (Art. 33(2) LCR delegated act)	Chapter 5, point 14	Amendment	Two criteria specified in the draft Guide (pag. 10 subpara. (iii) and pag. 12 subpara. (iii)) provide that the derogation from the inflow cap can be granted if the terms of the contractual agreement governing the deposit cannot be changed substantially without prior approval of the ECB.

			This provision may apply to both inflows in groups and within an IPS. We are wondering how such provision could be implemented in practice, where every single substantial change of the contractual agreement would have to be approved by the ECB. Other provisions where also prior approvals of the competent authority are foreseen have shown in the past that in certain cases it is difficult to receive an approval within a certain time frame, especially to assist specific operational needs. If that would also be the case with this approval no future changes of the contractual agreement would become impossible. Therefore we think that the practical application of this provision is too harsh and we would ask the ECB to better clarify why and when the ex-ante approval would be foreseen and to consider a more specific scope for certain circumstances for the limitations indicated in these provisions.
Cap on inflows (Art. 33(2) LCR delegated act)	Chapter 5, point 14	Amendment	The requirements (vi) to (ix) (see page 13) seem particularly complex and way too vague and bureaucratic if the intention of the ECB is to subsequently apply them LSIs in due time. In particular, not only subpara. (vi) and (ix) seem an actual duplication, it is difficult to assess how subpara. (vii) could be declined in networks with hundreds of participating institutions. Also the implications for the declination of subpara. (viii) are too vague.
Initial capital requirements on going concern (Art. 93(6) CRR)	Chapter 7, pag. 16	Clarification	The ECB intends to exercise the option in Article 93(6) of the CRR and to determine the policy on the exercise of that option, including the potential development of more detailed specifications, following an assessment of specific future cases. We believe it should be very clear that such initial assessment performed by the ECB should be limited to directly supervised Significant Institutions. The assessment of LSIs should be handled individually by the national authority, as this provision is especially relevant for very small institutions operating in very specific national circumstances.
Valuation of assets and off-balance sheet items – use of IFRS for prudential purposes (Art. 24(2) CRR)	Chapter 1, point 10	Clarification	We welcome the fact that ECB intends not to exercise the option for the use of IFRS in a general sense and would not oblige institutions to apply IFRS. We understand that the proposal would be designed for those who want to apply IFRS for themselves (enabling clause).