

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)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 ⁽¹⁾, and in particular Article 4(3), Article 6, and Article 9(1) and (2) thereof,

Having regard to 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 ⁽²⁾, and in particular Articles 89(3), 178(1), 282(6), 327(2), Article 380, Articles 395(1), 400(2), 415(3), 420(2), 467(3), 468(3), 471(1), 473(1), 478(3), Article 479(1) and (4), Article 480(3), Article 481(1) and (5), and Articles 486(6) and 495(1) thereof,

Having regard to Commission Implementing Regulation (EU) No 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council ⁽³⁾, and in particular Article 2 thereof and Annex II thereto,

Having regard to 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 ⁽⁴⁾, and in particular Articles 12(3) and 23(2), and Article 24(4) and (5) thereof,

Having regard to the public consultation and the analysis carried out pursuant to Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board approved in accordance with Article 26(7) of Regulation (EU) No 1024/2013,

Whereas:

- (1) The European Central Bank (ECB) is empowered to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union. In addition, Article 132 of the Treaty and Article 34 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), by referring to Article 25.2 of the Statute of the ESCB, entrust the ECB with regulatory powers to the extent necessary to implement specific tasks concerning policies relating to the prudential supervision of credit institutions.
- (2) With regard to prudential requirements for credit institutions Union law provides for options and discretions that competent authorities may exercise.
- (3) The ECB is the competent authority in the participating Member States as established by relevant Union law for the purpose of carrying out its microprudential tasks within the single supervisory mechanism (SSM) under Regulation (EU) No 1024/2013 in respect of credit institutions that are classified as significant in accordance with Article 6(4) of that Regulation and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽⁵⁾. Therefore it has all the powers and obligations that competent authorities have under relevant Union law. In particular, the ECB has the power to exercise the options and discretions available in Union law.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 176, 27.6.2013, p. 1.

⁽³⁾ OJ L 185, 25.6.2014, p. 1.

⁽⁴⁾ OJ L 11, 17.1.2015, p. 1.

⁽⁵⁾ 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).

- (4) The ECB carries out its supervisory tasks within the SSM, which should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality. In carrying out its supervisory tasks, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.
- (5) In order to ensure progressive convergence between the level of own funds and the prudential adjustments applied to the definition of own funds across the Union and the definition of own funds laid down in Union law during a transitional period, the phasing-in of own funds requirements should occur gradually.
- (6) The consistent application of prudential requirements for credit institutions within the Member States participating in the SSM is a specific objective of Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) and is entrusted to the ECB.
- (7) In accordance with Regulation (EU) No 1024/2013, the ECB applies all relevant Union law and where this Union law is composed of directives, the national legislation transposing those directives. Where relevant Union law is composed of regulations and where currently those regulations explicitly grant options and discretions to the Member States, the ECB should also apply the national legislation exercising those options and discretions. Such national legislation should not affect the smooth functioning of the SSM, for which the ECB is responsible.
- (8) Such options and discretions do not include those available only to competent authorities, which the ECB is solely competent to exercise and should exercise as appropriate.
- (9) In exercising options and discretions, the ECB, as the competent authority, should take account of the general principles of Union law, in particular equal treatment, proportionality and the legitimate expectations of supervised credit institutions.
- (10) With regard to the legitimate expectations of supervised credit institutions, the ECB acknowledges the need to allow for transitional periods where its exercise of options and discretions significantly departs from the approach taken by the national competent authorities prior to the entry into force of this Regulation. In particular, where the ECB exercises its options and discretions in relation to transitional provisions laid down in Regulation (EU) No 575/2013, this Regulation should establish appropriate transitional periods.
- (11) Article 143(1)(b) of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾ requires competent authorities to publish the manner of exercise of the options and discretions available in Union law,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation specifies certain of the options and discretions conferred on competent authorities under Union law concerning prudential requirements for credit institutions that the ECB is exercising. It shall apply exclusively with regard to those credit institutions classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013, and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17).

⁽¹⁾ 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).

*Article 2***Definitions**

For the purposes of this Regulation, 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 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, credit institutions shall 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.

CHAPTER II

CAPITAL REQUIREMENTS*Article 4***Article 178(1) of Regulation (EU) No 575/2013: Default of an obligor**

Irrespective of the national treatment prior to the entry into force of this Regulation, credit institutions shall 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, credit institutions shall use the mark-to-market method set out in Article 274 of Regulation (EU) No 575/2013.

*Article 6***Article 327(2) of Regulation (EU) No 575/2013: Netting**

1. Credit institutions may use netting between a convertible and an offsetting position in the instrument underlying it, as referred to in Article 327(2) of Regulation (EU) No 575/2013, provided that either of the following conditions are fulfilled:

- (a) prior to 4 November 2014 the national competent authority adopted an approach under which the likelihood of a particular convertible's being converted is taken into account; or

(b) prior to 4 November 2014 the national competent authority required an own funds requirement to cover any loss that conversion may entail.

2. The approaches adopted by national competent authorities referred to in paragraph 1 shall continue to be used pending the adoption by the ECB of its own approach pursuant to Article 327(2) of Regulation (EU) No 575/2013.

Article 7

Article 380 of Regulation (EU) No 575/2013: Waiver

In the event of a system-wide failure within the meaning of Article 380 of Regulation (EU) No 575/2013 which the ECB confirms by issuing a public statement, until the ECB issues a public statement that the situation referred to therein is rectified, the following provisions shall apply:

- (a) credit institutions shall 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 shall not be deemed a default for purposes of credit risk.

CHAPTER III

LARGE EXPOSURES

Article 8

Article 395(1) of Regulation (EU) No 575/2013: Limits to large exposures

Irrespective of the national treatment prior to the entry into force of this Regulation, the limit on the value of a large exposure within the meaning of Article 395(1) of Regulation (EU) No 575/2013 shall not be lower than EUR 150 million.

Article 9

Article 400(2) of Regulation (EU) No 575/2013: Exemptions

1. 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.
2. 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.
3. The exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution to the undertakings referred to therein 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 Annex I to this Regulation, are fulfilled and in so far as those undertakings are covered by the same supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC of the European Parliament and of the Council ⁽¹⁾, or with equivalent standards in force in a third country, as further specified in Annex I to this Regulation.
4. 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 Annex II to this Regulation, are fulfilled.

⁽¹⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

5. 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.

6. Credit institutions shall assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the relevant Annex of this Regulation applicable to the specific exposure, are fulfilled. The ECB may verify this assessment at any time and request credit institutions to submit the documentation referred to in the relevant Annex for this purpose.

7. 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.

CHAPTER IV

LIQUIDITY

Article 10

Article 415(3) of Regulation (EU) No 575/2013: Reporting obligation

Without prejudice to other reporting requirements, credit institutions shall, in accordance with Article 415(3) of Regulation (EU) No 575/2013, report to the ECB the information required under national law for the purpose of monitoring compliance with national liquidity standards, where that information has not already been provided to national competent authorities.

Article 11

Article 420(2) of Regulation (EU) No 575/2013 and Article 23(2) of Delegated Regulation (EU) 2015/61: Liquidity outflows

When assessing liquidity outflows resulting from trade finance off-balance sheet items, as referred to in Article 420(2) of and Annex I to Regulation (EU) No 575/2013, and until specific outflow rates are determined by the ECB in accordance with Article 23(2) of Delegated Regulation (EU) 2015/61, credit institutions shall assume an outflow rate of 5 %, as referred to in Article 420(2) of that Regulation and Article 23(2) of Delegated Regulation (EU) 2015/61. The corresponding outflows shall be reported in accordance with Commission Implementing Regulation (EU) No 680/2014 ⁽¹⁾.

Article 12

Article 12(3) of Delegated Regulation (EU) 2015/61: Level 2B assets

1. Credit institutions that in accordance with their statutes of incorporation are unable for reasons of religious observance to hold interest-bearing assets may include corporate debt securities as level 2B liquid assets in accordance with all of the conditions specified in Article 12(1)(b), including points (ii) and (iii), of Delegated Regulation (EU) 2015/61.

2. For credit institutions referred to in paragraph 1, the ECB may periodically review the requirement referred to in that paragraph and allow an exemption from Article 12(1)(b)(ii) and (iii) of Delegated Regulation (EU) 2015/61, where the conditions specified in Article 12(3) of that Delegated Regulation have been met.

⁽¹⁾ 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).

*Article 13***Article 24(4) and (5) of Delegated Regulation (EU) 2015/61: Outflows from stable retail deposits**

Credit institutions shall 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.

CHAPTER V

TRANSITIONAL PROVISIONS OF REGULATION (EU) NO 575/2013*Article 14***Article 467(3) of Regulation (EU) No 575/2013: Unrealised losses measured at fair value**

1. During the period from 1 January 2016 to 31 December 2017, credit institutions shall include in the calculation of their Common Equity Tier 1 items only the applicable percentage of unrealised losses within the meaning of Article 467(1) of Regulation (EU) 575/2013 and including losses on exposures to central governments classified in the 'available for sale' category.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017.
3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets applicable percentages higher than those specified in paragraph 2.

*Article 15***Article 468(3) of Regulation (EU) No 575/2013: Unrealised gains measured at fair value**

1. During the period from 1 January 2016 to 31 December 2017, credit institutions shall remove from their calculation of Common Equity Tier 1 items the applicable percentage of unrealised gains within the meaning of Article 468(1) of Regulation (EU) No 575/2013 and including gains on exposures to central governments classified in the 'available for sale' category.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 20 % during the period from 1 January 2017 to 31 December 2017.
3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets applicable percentages that are higher than those specified in paragraph 2.

*Article 16***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 2016 to 31 December 2018, credit institutions shall be permitted not to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies from Common Equity Tier 1 items in accordance with the treatment set out in national provisions, provided that the conditions referred to in Article 471(1) of Regulation (EU) No 575/2013 are met.

2. From 1 January 2019, credit institutions are required 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 competent authority pursuant to Article 49(1) of Regulation (EU) No 575/2013.

Article 17

Article 473(1) of Regulation (EU) No 575/2013: Introduction of amendments to the International Accounting Standard 19

1. During the period from 1 January 2016 to 31 December 2018, credit institutions may add to their Common Equity Tier 1 capital the amount referred to in Article 473(1) of Regulation (EU) No 575/2013 multiplied by the applicable factor, which shall be:

- (a) 0,6 during the period from 1 January 2016 to 31 December 2016;
- (b) 0,4 during the period from 1 January 2017 to 31 December 2017;
- (c) 0,2 during the period from 1 January 2018 to 31 December 2018.

2. This Article is without prejudice to previous decisions of the national competent authorities or national law in force prior to the entry into force of this Regulation where such decisions or national law do not permit institutions to add to their Common Equity Tier 1 capital the amount referred to in paragraph 1.

Article 18

Article 478(3)(a),(c) and (d) of Regulation (EU) No 575/2013: Applicable percentages for deduction from Common Equity Tier 1, additional Tier 1 and Tier 2 items

1. For the purposes of Article 478(1) of Regulation (EU) No 575/2013, the applicable percentage shall be:

- (a) 60 % during the period from 1 January 2016 to 31 December 2016;
- (b) 80 % during the period from 1 January 2017 to 31 December 2017;
- (c) 100 % from 1 January 2018.

2. This Article shall not apply to deferred tax assets that rely on future profitability.

3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets percentages that are higher than those specified in paragraph 1.

Article 19

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

1. 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:

- (a) 60 % during the period from 1 January 2016 to 31 December 2016;
- (b) 80 % during the period from 1 January 2017 to 31 December 2017;
- (c) 100 % from 1 January 2018.

2. For the purposes of Article 478(2) of Regulation (EU) No 575/2013, the applicable percentage shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 100 % from 1 January 2018.
3. By way of derogation from paragraph 2, 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:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 60 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 80 % during the period from 1 January 2018 to 31 December 2018;
 - (d) 100 % from 1 January 2019.
4. Paragraphs 2 and 3 shall not apply to credit institutions which, at the date of entry into force of this Regulation, are subject to restructuring plans approved by the Commission.
5. Where a credit institution falling within the scope of paragraph 4 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, the exception in paragraph 4 shall apply 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.
6. The ECB may review the application of paragraphs 4 and 5 in 2020 based on monitoring of the situation of those credit institutions.
7. In the event of an unforeseen increase in the impact of the deductions provided for in paragraphs 2 and 3 which the ECB determines is material, credit institutions shall be allowed not to apply paragraph 2 or 3.
8. Where paragraphs 2 and 3 do not apply, credit institutions can apply national legislative provisions.
9. This Article is without prejudice to national law in force prior to the entry into force of this Regulation, provided that such law sets percentages that are higher than those specified in paragraphs 1, 2 and 3.

Article 20

Article 479(1) and (4) of Regulation (EU) No 575/2013: Recognition in consolidated Common Equity Tier 1 capital of instruments and items that do not qualify as minority interests

1. During the period from 1 January 2016 to 31 December 2017, the applicable percentage of the items referred to in Article 479(1) of Regulation (EU) No 575/2013 that would have qualified as consolidated reserves in accordance with national measures implementing Article 65 of Directive 2006/48/EC of the European Parliament and of the Council ⁽¹⁾ shall qualify as consolidated Common Equity Tier 1 capital according to the percentages set out below.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 20 % during the period from 1 January 2017 to 31 December 2017.

⁽¹⁾ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets percentages that are lower than those specified in paragraph 2.

Article 21

Article 480(3) of Regulation (EU) No 575/2013: Recognition in consolidated own funds of minority interests and qualifying additional Tier 1 and Tier 2 capital

1. During the period from 1 January 2016 to 31 December 2017, as referred to in Article 480(3) of Regulation (EU) No 575/2013, the value of the applicable factor under Article 480(1) of that Regulation shall be:

- (a) 0,6 during the period from 1 January 2016 to 31 December 2016; and
- (b) 0,8 during the period from 1 January 2017 to 31 December 2017.

2. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets factors that are higher than those specified in paragraph 1.

Article 22

Article 481(1) and (5) of Regulation (EU) No 575/2013: Additional filters and deductions

1. During the period from 1 January 2016 to 31 December 2017, for the purpose of applying filters or deductions required under national transposition measures and referred to in Article 481(1) of Regulation (EU) No 575/2013 and provided that the conditions thereof are met, the applicable percentages shall be:

- (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
- (b) 20 % during the period from 1 January 2017 to 31 December 2017.

2. During the period from 1 January 2016 to 31 December 2017, credit institutions shall apply the treatment provided for by national law to the amount remaining after the filter or deduction has been applied in accordance with paragraph 1.

3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets stricter requirements than those specified in paragraph 1.

Article 23

Article 486(6) of Regulation (EU) No 575/2013: Limits for grandfathering items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items

1. For the purposes of Article 486 of Regulation (EU) No 575/2013, the applicable percentages shall be:

- (a) 60 % during the period from 1 January 2016 to 31 December 2016;
- (b) 50 % during the period from 1 January 2017 to 31 December 2017;
- (c) 40 % during the period from 1 January 2018 to 31 December 2018;
- (d) 30 % during the period from 1 January 2019 to 31 December 2019;
- (e) 20 % during the period from 1 January 2020 to 31 December 2020;
- (f) 10 % during the period from 1 January 2021 to 31 December 2021.

2. This Article is without prejudice to national law in force prior to the entry into force of this Regulation, provided that such law sets percentages that are lower than those specified in paragraph 1.

Article 24

Article 495(1) of Regulation (EU) No 575/2013: Treatment of equity exposures under the Internal Ratings Based (IRB) approach

The categories of equity exposures that benefit from the exemption from the IRB approach in accordance with Article 495(1) of Regulation (EU) No 575/2013 shall include, until 31 December 2017, only the categories of equity exposures that on 31 December 2013 were already benefiting from an exemption from the IRB treatment, in accordance with Article 2 of Commission Delegated Regulation (EU) 2015/1556 ⁽¹⁾.

Article 25

Entry into force

1. This Regulation shall enter into force on 1 October 2016.
2. Article 4 shall apply from 31 December 2016 and Article 13 shall apply from 1 January 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 14 March 2016.

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

⁽¹⁾ Commission Delegated Regulation (EU) 2015/1556 of 11 June 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the transitional treatment of equity exposures under the IRB approach (OJ L 244, 19.9.2015, p. 9).

ANNEX I

Conditions for assessing an exemption from the large exposure limit, in accordance with Article 400(2)(c) of Regulation (EU) No 575/2013 and Article 9(3) of this Regulation

1. This Annex applies in respect of exemptions from the large exposure limit under Article 9(3) of this Regulation. For the purposes of Article 9(3), third countries listed in Annex I to Commission Implementing Decision 2014/908/EU ⁽¹⁾ are deemed to be equivalent.
2. Credit institutions must take the following criteria into account when assessing whether an exposure referred to in Article 400(2)(c) 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 counterparty or the relationship between the credit institution and the counterparty eliminate or reduce the risk of the exposure, as provided for in Article 400(3)(a) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) the conditions provided for in Article 113(6)(b), (c) and (e) of Regulation (EU) No 575/2013 are met and in particular whether the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution and whether the IT systems are integrated or, at least, fully aligned. In addition, they must take into account whether 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 ⁽²⁾ are required to be implemented;
 - (ii) the proposed intragroup exposures are justified by the group's funding structure;
 - (iii) the process by which a decision is made to approve an exposure to the intragroup counterparty, 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 large exposures to group undertakings are aligned with its risk strategy at legal entity level and at consolidated level, where relevant.
 - (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, as provided for in Article 400(3)(b) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) the credit institution has robust processes, procedures and controls, at individual level and at consolidated level, where relevant, to ensure that use of the exemption would not result in concentration risk that is outside its risk strategy and against the principles of sound internal liquidity management within the group;
 - (ii) the credit institution has formally considered the concentration risk arising from intragroup exposures as part of its overall risk assessment framework;
 - (iii) the credit institution has a risk control framework, at legal entity level and at consolidated level where relevant, that adequately monitors the proposed exposures;
 - (iv) the concentration risk arising has been or will be clearly identified in the internal capital adequacy assessment process (ICAAP) of the credit institution 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;
 - (v) there is evidence that the management of concentration risk is consistent with the group's recovery plan.

⁽¹⁾ Commission Implementing Decision 2014/908/EU of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 359, 16.12.2014, p. 155).

⁽²⁾ 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).

3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, the European Central Bank may request credit 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 for an exemption as laid down in Article 400(2)(c) and Article 400(3) of Regulation (EU) No 575/2013.
 - (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 timely repayment of exposures by a counterparty to the credit institution that arise from either applicable regulations, including fiscal regulations, or binding agreements.
 - (c) A statement signed by the legal representative and approved by the management body stating that:
 - (i) there are no practical impediments that would hinder the timely repayment of exposures by a counterparty to the credit institution;
 - (ii) intragroup exposures are justified by the group's funding structure;
 - (iii) the process by which a decision is made to approve an exposure to an intragroup counterparty and the monitoring and review process applicable to such exposures, at legal entity level and at consolidated level, are similar to those that are applied to third-party lending;
 - (iv) concentration risk arising from intragroup exposures 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 counterparty'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 group.
 - (e) Documentation showing that the ICAAP clearly identifies the concentration risk arising from the large intragroup exposures and that this risk is actively managed.
 - (f) Documentation showing that the management of concentration risk is consistent with the group's recovery plan.
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ANNEX II

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 9(4) of this Regulation

1. Credit institutions must 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, credit 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 the Directive 2014/59/EU 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, as provided for in Article 400(3)(b) of Regulation (EU) No 575/2013, credit 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, credit institutions must 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;
 - (b) clearing liquidity within the network, within the scope of in 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, the European Central Bank may request credit 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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