I

(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 25 March 2022

amending Recommendation ECB/2017/10 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/2022/13)

(2022/C 142/01)

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 [1], and in particular Article 4(3) and Article 6(1) and (5)(c) thereof,

Whereas:

(1) On 4 April 2017 the European Central Bank (ECB) adopted Recommendation ECB/2017/10 of the European Central Bank [2] (hereinafter the 'O&D Recommendation'), in which it established common specifications for the exercise of certain options and discretions available in Union law by national competent authorities (NCAs) in relation to less significant institutions. Legislation introduced since the adoption of the O&D Recommendation has amended or deleted some of the options and discretions provided in Union law that were included in the O&D Recommendation, and the ECB Guide on options and discretions available in Union law of November 2016 (hereinafter the 'ECB Guide') has also been updated. Therefore, certain consequential amendments to the O&D Recommendation are necessary.

(2) With respect to the options and discretions related to consolidated supervision and waivers of prudential requirements, in line with the specifications 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. Rules on the identification of the consolidating supervisor and the methods and scope of consolidation and sub-consolidation should also be applied in a manner consistent with the ECB Guide.

(3) 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.

[1] OJ L 287, 29.10.2013, p.63.

[2] 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) (OJ C 120, 13.4.2017, p. 2).

(4) The ECB recommends a consistent and prudent approach with respect to options and discretions related to own funds requirements, in line with the specifications contained in Chapter 2 of Section II of the ECB Guide. To reflect specificities of less significant institutions in relation to the excess capital margin requirement for reductions of own funds, certain adjustments of those specifications are necessary.

(5) The ECB recommends a consistent and prudent approach with respect to the options and discretions related to liquidity requirements, which should follow the specifications 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.

(6) As regards outflows from trade finance off-balance-sheet related products, specifications have been added to the ECB Guide to take account of the new ECB policy which allows additional flexibility in the determination of outflow rates. Therefore, to ensure consistency in the application of outflow rates to trade finance off-balance-sheet exposures amongst significant and less significant institutions, NCAs should follow the specifications included in the ECB Guide.

(7) As regards the outflow rates to be applied to stable retail deposits, certain factors have impeded the practical application of the discretion addressed in Article 13 of Regulation (EU) 2016/445 of the European Central Bank (ECB/2016/4) ([3]) whereby competent authorities may authorise institutions to apply a 3 % outflow rate to stable retail deposits covered by a deposit guarantee scheme (DGS), subject to the prior approval of the European Commission in accordance with Article 24(4) and (5) of Commission Delegated Regulation (EU) 2015/61 ([4]). Further evidence and analysis are necessary in order to demonstrate that the run-off rates for stable retail deposits covered by a DGS as referred to in Article 24(5) of Delegated Regulation (EU) 2015/61 would be below 3 % during any stress period experienced consistent with the scenarios referred to in Article 5 of Delegated Regulation (EU) 2015/61. In the absence of such evidence and analysis, the general specification of a 3 % outflow rate has been removed from Guideline ECB/2017/9 of the European Central Bank ([5]) concerning the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions. The ECB's position towards this option has been set out in Section III of the ECB Guide. To ensure consistency in the exercise of options and discretions in relation to significant and less significant institutions, NCAs should adopt the same position.

(8) With respect to the options and discretions related to the leverage ratio, the ECB recommends a consistent and prudent approach, in common with the specifications set out in Chapter 3 of Section I of the ECB Guide and Chapter 7 of Section II thereof.

(9) With respect to the options and discretions related to intermediate parent undertakings and the possibility for competent authorities to allow two or more institutions in the Union which are part of the same third-country group to have two intermediate EU parent undertakings pursuant to Article 21b(2) of Directive 2013/36/EU of the European Parliament and of the Council ([6]), and to the relevance of such possibility in the case of less significant institutions, the ECB recommends that NCAs adopt an approach consistent with that set out in Chapter 9 of Section II of the ECB Guide, in order to ensure a level playing field.

(10) With respect to the options and discretions related to reporting requirements for institutions, in particular concerning valuation of assets and off-balance-sheet items and concerning reporting waivers, the ECB recommends that NCAs follow the approach set out in Chapter 8 of Section II of the ECB Guide, so as to ensure both a consistent application of policy standards across the Single Supervisory Mechanism and a level playing field.

([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]) 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).

([5]) Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of the options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9) (OJ L 101, 13.4.2017, p. 156).

([6]) 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(11) With respect to the options and discretions related to governance, the O&D Recommendation should be amended to reflect legislative changes concerning the supervisory treatment of (mixed) financial holding companies.

(12) Therefore, Recommendation ECB/2017/10 should be amended accordingly,

HAS ADOPTED THIS RECOMMENDATION:

PART ONE

Amendments

Recommendation ECB/2017/10 is amended as follows:

1. in Part One, paragraph 2 in Section I is replaced by:

'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, Commission Delegated Regulation (EU) 2015/61 (*) and Directive 2014/59/EU of the European Parliament and of the Council (**) apply.

(*) 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).

(**) 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).';

2. in Part Two, the following Section IIa is inserted:

'**IIa.**

Own funds requirements

1. Article 78(1)(b) of Regulation (EU) No 575/2013: reduction of own funds: excess capital margin requirement

1.1 An NCA should determine the excess margin required pursuant to Article 78(1)(b) of Regulation (EU) No 575/2013 for the purpose of a reduction of own funds, provided that the conditions of Article 78(1) are met and after assessing all of the following factors:

(a) whether the credit institution taking any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013 would continue to exceed, over a three-year horizon, the overall capital requirements set out in the most recent applicable supervisory review and evaluation process (SREP) decision by at least the guidance on additional own funds set out in the same SREP decision;

(b) whether the credit institution taking any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013 would continue to exceed, over a three-year horizon, the requirements laid down in Directive 2014/59/EU by at least the margin which the National Resolution Authority or the Single Resolution Board, in agreement with the NCA, would consider necessary to fulfil the condition set out in Article 78a of Regulation (EU) No 575/2013;

(c) the impact of the planned reduction on the relevant tier of own funds;

(d) whether the credit institution taking any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013 would continue to exceed, over a three-year horizon, the leverage ratio requirement laid down in Article 92(1)(d) of that Regulation, and the additional own funds requirement to address the risk of excessive leverage set out in the most recent applicable SREP decision, by at least the guidance on additional own funds to address the risk of excessive leverage set out in that SREP decision.

1.2 Applications to reduce own funds received from credit institutions that do not adhere to the margins set out above should still be approved on a case-by-case basis where they are duly justified by well-founded prudential arguments. Where the margin under point (b) of paragraph 1.1 is not adhered to, the NCA should seek the opinion of the National Resolution Authority or the Single Resolution Board on whether the own funds reduction may jeopardise the fulfilment of the requirements for own funds and eligible liabilities laid down in Directive 2014/59/EU.

1.3 Where for the purposes of point (a) or (d) of paragraph 1.1 the credit institution is not subject to guidance on additional own funds, the margin must be determined on a case-by-case basis, having regard to the specific circumstances of the credit institution.

2. Second subparagraph of Article 78(1) of Regulation (EU) No 575/2013: reduction of own funds: general prior permission

An NCA should grant the general prior permission provided for in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 where the conditions set out therein and in Commission Delegated Regulation (EU) No 241/2014 (*) are met. An NCA should determine the margin specified in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, after assessing all of the factors set out in paragraph 1 of Section IIa of this Recommendation.

(*) Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).';

3. In Part Two, Section V is deleted;

4. The Annex is replaced by the Annex to this Recommendation.

PART TWO

Addressees

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

NCAs are recommended to apply this Recommendation as of the date of its adoption.

Done at Frankfurt am Main, 25 March 2022.

The President of the ECB
Christine LAGARDE

ANNEX

The Annex to Recommendation ECB/2017/10 is replaced by the following:

'*ANNEX*

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Consolidated supervision and waivers of prudential requirements	
Article 7(1) to (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 18(3) of Regulation (EU) No 575/2013: methods for consolidation in the case of undertakings related within the meaning of Article 22(7) of Directive 2013/34/EU	Section III, Chapter 1 paragraph 1 of the ECB Guide
Article 18(5) of Regulation (EU) No 575/2013: methods for consolidation in the case of participations or capital ties other than those referred to in Article 18(1) and (4)	Section III, Chapter 1 paragraph 2 of the ECB Guide
Article 18(6) of Regulation (EU) No 575/2013: consolidation in the cases of significant influence and common management	Section III, Chapter 1 paragraph 3 of the ECB Guide
Article 18(7) of Regulation (EU) No 575/2013: consolidation	Section II, Chapter 1 paragraph 8 of the ECB Guide
Article 18(8) of Regulation (EU) No 575/2013: consolidation	Section III, Chapter 1 paragraph 4 of the ECB Guide
Article 19(2) of Regulation (EU) No 575/2013: exclusion of consolidation	Section II, Chapter 1 paragraph 9 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 10 of the ECB Guide
Own funds	
Article 26(3) of Regulation (EU) No 575/2013: classification as CET1 instruments of subsequent issuances	Section II, Chapter 2 paragraph 3 of the ECB Guide
Article 49(1) of Regulation (EU) No 575/2013: deduction of insurance holdings	Section II, Chapter 2 paragraph 5 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 6 of the ECB Guide
Article 54(1)(e) of Regulation (EU) No 575/2013: calculation of the trigger for additional Tier 1 instruments issued by subsidiary undertakings established in third countries	Section II, Chapter 2 paragraph 7 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Article 78(3) of Regulation (EU) No 575/2013: reduction of own funds – mutuals, savings and cooperatives	Section II, Chapter 2 paragraph 10 of the ECB Guide
Article 78(4) of Regulation (EU) No 575/2013: reduction of additional Tier 1 or Tier 2 instruments	Section II, Chapter 2 paragraph 11 of the ECB Guide
Article 79(1) of Regulation (EU) No 575/2013: reduction of additional Tier 1 or Tier 2 instruments	Section II, Chapter 2 paragraph 12 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 13 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 14 of the ECB Guide
Article 142(1) of Directive 2013/36/EU: failure to meet combined buffer requirement or leverage ratio buffer requirement	Section II, Chapter 11 paragraph 12 of the ECB Guide
Capital requirements	
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 estimates of volatility adjustments	Section II, Chapter 3 paragraph 6 of the ECB Guide
Article 244(2) and the second subparagraph of Article 245(2) of Regulation (EU) No 575/2013: significant risk transfer	Section II, Chapter 3 paragraph 9 of the ECB Guide
Article 283(3) of Regulation (EU) No 575/2013: implementation of the internal model method	Section II, Chapter 3 paragraph 8 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 9 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 13 of the ECB Guide
Institutional protection schemes	
Article 8(4) of Regulation (EU) No 575/2013: liquidity waiver for members of institutional protection schemes	Section II, Chapter 4 paragraph 3 of the ECB Guide
Large exposures	
Article 396(1) of Regulation (EU) No 575/2013: compliance with large exposures requirements	Section II, Chapter 5 paragraph 3 of the ECB Guide
Article 400(2)(c) of Regulation (EU) No 575/2013: compliance with large exposures requirements	Section II, Chapter 5 paragraph 4 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Liquidity	
Article 414 of Regulation (EU) No 575/2013: compliance with liquidity requirements	Section II, Chapter 6 paragraph 3 of the ECB Guide
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 10 of the ECB Guide
Article 425(4) of Regulation (EU) No 575/2013 and Article 34 of Delegated Regulation (EU) 2015/61: intragroup liquidity inflows	Section II, Chapter 6, paragraph 14 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 17(4) of Delegated Regulation (EU) 2015/61: waiver of the unwind mechanism	Section I, Chapter 3 paragraph 1 of the ECB Guide
Article 23(2) of Delegated Regulation (EU) 2015/61: outflows from other products and services	Section II, Chapter 6 paragraph 7 of the ECB Guide
Article 24(4) and (5) of Delegated Regulation (EU) 2015/61 outflows from stable retail deposits	Section III, Chapter 3 paragraph 1 of the ECB Guide
Article 24(6) of Delegated Regulation (EU) 2015/61: multiplier for retail deposits covered by a deposit guarantee scheme	Section III, Chapter 3 paragraph 3 of the ECB Guide
Article 25(3) of Delegated Regulation (EU) 2015/61: higher outflow rates	Section II, Chapter 6 paragraph 8 of the ECB Guide
Article 26 of Delegated Regulation (EU) 2015/61: outflows with inter-dependent inflows	Section II, Chapter 6 paragraph 9 of the ECB Guide
Article 29 of Delegated Regulation (EU) 2015/61: preferential treatment within a group or an institutional protection scheme (IPS)	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 11 of the ECB Guide
Article 33(2) of Delegated Regulation (EU) 2015/61: cap on inflows	Section II, Chapter 6 paragraph 12 of the ECB Guide
Article 33(3) to (5) of Delegated Regulation (EU) 2015/61: specialised credit institutions	Section II, Chapter 6 paragraph 13 of the ECB Guide
Article 34 of Delegated Regulation (EU) 2015/61: inflows within a group or an institutional protection scheme	Section II, Chapter 6 paragraph 14 of the ECB Guide
Article 428b(5) of Regulation (EU) No 575/2013: net stable funding requirement (NSFR) - restriction of currency mismatches	Section II, Chapter 6 paragraph 15 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Article 428f(1) of Regulation (EU) No 575/2013: NSFR - interdependent assets and liabilities	Section II, Chapter 6 paragraph 16 of the ECB Guide
Article 428h of Regulation (EU) No 575/2013: NSFR - Preferential treatment within a group or an IPS	Section II, Chapter 6 paragraph 17 of the ECB Guide.
Article 428p(7) of Regulation (EU) No 575/2013: NSFR - treatment of non-standard central bank operations	Section I, Chapter 3 paragraph 1 of the ECB Guide
Article 428ai of Regulation (EU) No 575/2013: NSFR - application of the simplified net stable funding requirement (sNSFR)	Section II, Chapter 6 paragraph 18 of the ECB Guide
Article 428aq(7) of Regulation (EU) No 575/2013 - NSFR - treatment of non-standard central bank operations (sNSFR)	Section I, Chapter 3 paragraph 1 of the ECB Guide
Article 8 of Regulation (EU) No 575/2013: liquidity waivers	Section II, Chapter 4 paragraph 3 of the ECB Guide
Leverage	
Article 429a(2) of Regulation (EU) No 575/2013: preferential treatment in favour of public development banks	Section II, Chapter 7 paragraph 3 of the ECB Guide
Article 429a(5) of Regulation (EU) No 575/2013: exemption of central bank reserves from calculation of leverage ratio	Section I, Chapter 3 paragraph 1 of the ECB Guide
Article 429b(3) of Regulation (EU) No 575/2013: preferential treatment for notional cash pooling arrangements	Section II, Chapter 7 paragraph 4 of the ECB Guide
Reporting requirements	
Article 430(11) of Regulation (EU) No 575/2013: reporting on prudential requirements and financial information	Section II, Chapter 8 paragraph 1 of the ECB Guide
General requirements for access to the activity of credit institutions	
Article 21(1) of Directive 2013/36/EU: waiver for credit institutions permanently affiliated to a central body	Section II, Chapter 9 paragraph 1 of the ECB Guide
Article 21b(2) of Directive 2013/36/EU: intermediate parent undertaking	Section II, Chapter 9 paragraph 2 of the ECB Guide
Governance arrangements and prudential supervision	
Article 88(1)(e) 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 6 of the ECB Guide

Legal basis of the option and/or discretion	Approach recommended: consistency with the policy on options and discretions for significant institutions
Articles 117 and 118 of Directive 2013/36/EU: cooperation obligations	Section II, Chapter 11 paragraph 9 of the ECB Guide
Article 142 of Directive 2013/36/EU: capital conservation plans	Section II, Chapter 11 paragraph 12 of the ECB Guide'