



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

Mr Sven Giegold
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 17 December 2017

Re: Your letter (QZ-109)

Honourable Member of the European Parliament, dear Mr Giegold,

Thank you for your letter on options and national discretions (ONDs) under the control of national legislators, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 4 December 2017.

The European regulatory framework for credit institutions¹ contains a number of provisions which allow the prudential supervisor or a Member State to decide on specific aspects of their application. These provisions, known as ONDs, can be warranted in certain cases to reflect the diversity of the European banking sector, or to enable supervisory measures to be applied on a case-by-case basis, taking into account the individual features of each institution. However, a diverging application of ONDs can have a negative impact on the overall robustness of the supervisory framework as well as the comparability of prudential requirements across banks. It also adds a layer of complexity and cost for both supervisors and credit institutions operating across borders. Therefore, the harmonisation of ONDs – when a differentiated application is not justified from a prudential perspective – is crucial for ensuring a level playing field and financial stability.

This was one of the fundamental issues that the ECB identified when it assumed its supervisory tasks: in our view, the single European rulebook was, and remains, insufficiently “single”. Since the majority of ONDs are granted to the supervisor responsible for microprudential supervision, it is within the ECB’s remit to exercise them for significant banks, taking into account its responsibility for ensuring supervisory convergence and financial stability within the banking union, as well as preserving the unity of the Single Market and fostering financial integration. The ECB therefore adopted, in close cooperation with the national competent authorities, a Regulation² and a Guide³ which harmonise the exercise of approximately 130 microprudential

¹ Most notably the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD IV)

² [Regulation \(EU\) 2016/445 of the European Central Bank](#)

³ [ECB Guide on options and discretions available in Union law](#)

ONDs for significant banks. These policies have been extended, as appropriate and proportional, to less significant institutions.

However, several other ONDs are granted to Member States, and are therefore for the national legislators to exercise⁴. The ECB has identified approximately 30 of these microprudential ONDs⁵. From the ECB's perspective, some of these could constitute a significant obstacle to harmonisation, not only in view of the long transitional period involved, but also in view of the negative impact they can have on levelling the playing field. In general, and as stated in its Opinion on the ongoing legislative reform of the prudential framework, the ECB is in support of action being taken on a legislative level in order to reduce sources of fragmentation of the single rulebook.

Most pertinent to this discussion is the OND which grants Member States the possibility of exempting certain exposures from the limits to large exposures laid down in the Capital Requirements Regulation (CRR) until the end of 2028 (Article 493 of the CRR), in parallel to a similar discretion granted to the supervisor. Eleven participating Member States have decided to exercise this discretion in a different manner from ECB Banking Supervision. From a legal perspective, this could constrain the ECB's efforts to promote the single rulebook and ensure supervisory convergence in the banking union. Therefore, this OND results in different prudential treatments being applied within the banking union. Furthermore, it should be mentioned that this OND will become even more important in the context of Brexit, as the policy on this OND is critical for maintaining exposures with third-country entities and the transactions they support, such as back-to-back booking models for the purposes of trading.

Granting the discretion(s) on large exposure limits exclusively to the supervisory authority could mitigate concerns from a harmonisation perspective, as it would enable the supervisor to form a prudent policy applicable to all significant banks operating across the banking union.

I share the concern that certain ONDs, and in particular the ONDs on large exposure limits, remain an obstacle to achieving a truly single rulebook and I would therefore very much welcome legislative work to address the issue. This would reduce regulatory fragmentation and contribute to establishing a level playing field in the banking union.

Yours sincerely,

[signed]

Danièle Nouy

⁴ The role of national legislators is also relevant to those ONDs provided for in the CRD IV which are granted to competent authorities, as their exercise is based on the respective national law transposing the CRD IV. The ECB is, in any case, obliged to apply national laws.

⁵ Annex 1 provides an overview of these ONDs, which include both permanent and transitional ones. Some of the transitional ONDs – for instance, the possibility of temporarily maintaining national liquidity requirements – are expected to expire soon. The Annex excludes the ONDs of a macroprudential nature provided for in the CRR/CRD IV (granted either to Member States or competent/designated authorities).

Microprudential ONDs granted to Member States under the CRR and CRD IV⁶

Capital Requirements Regulation

CRR Art. 4(2) – Credit risk (shares constituting an equivalent indirect holding of real estate to be treated as direct holdings)

CRR Art. 412(5) – Liquidity (possibility of maintaining national liquidity requirements)

CRR Art. 412(5) – Liquidity (possibility of front-loading the LCR)

CRR Art. 413(3) – Liquidity (NSFR), higher minimum requirements

CRR Art. 450(1) – Disclosure (enhanced disclosure on management arrangement)

CRR Art. 493(3) – Large exposures exemptions (transitional provisions) – **11 ONDs**

Capital Requirements Directive IV

CRD IV Art. 12(3) – Initial capital waiver

CRD IV Art. 12(4) – Initial capital waiver

CRD IV Art. 57(1) – Information exchange

CRD IV Art. 57(3) – Information exchange

CRD IV Art. 57(4) – Information exchange

CRD IV Art. 65(1) – Administrative penalties

CRD IV Art. 94(1) – Variable elements of remuneration – **4 ONDs** (*among which 1 OND for both Member State and competent authority*)

CRD IV Art. 152 – Reporting requirements for branches in host Member States

CRD IV Art. 160(6) – Transitional provisions for capital buffers (*both microprudential and macroprudential in nature*)

⁶ ONDs of a macroprudential nature are excluded from this list.