EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Feedback statement

Responses to the public consultation on the draft ECB Guide on the supervisory approach to consolidation in the banking sector

January 2021

Contents

This document provides an overview of the comments received during the public consultation on the draft ECB Guide on the supervisory approach to consolidation in the banking sector (hereafter “EGC”). Furthermore, it provides an assessment of those comments and explains the amendments made to the EGC as a result of the public consultation.

1 Introduction and overview of responses

1.1 Context

On 1 July 2020 the European Central Bank (ECB) launched a public consultation on the ECB Guide on the supervisory approach to consolidation in the banking sector (hereafter "EGC" or "the Guide"). The public consultation ended on 1 October 2020. This consultation was conducted in order to collect comments from relevant parties and to enhance transparency. The ECB has given due consideration to all the comments received during the consultation period.

1.2 Structure of the feedback statement

This feedback statement presents an overall assessment of the comments received during the public consultation. Amendments to the EGC have been made as a result of some of the comments received.

Section 2 of this document contains the summary of the comments received on each chapter of the EGC, the ECB analysis of and response to those comments, and notification of when they have resulted in amendments to the EGC. It is important to note that this feedback statement merges similar comments provided by several respondents into a single entry. The summary of comments received on each chapter of the EGC refers to the paragraphs of the draft Guide as published in July 2020, while the ECB's analysis of and response to those comments refer to the paragraphs of the amended EGC.

1.3 Response statistics

In total, 186 comments were received from twelve different stakeholders, which amounted to 152 comments after consideration of duplicate comments. These comments cover all the parts of the EGC. Contributors providing feedback included nine Banking associations, one private bank, a think-tank and a Member of the European Parliament.

1.4 Adoption of the EGC

A complete draft proposal of the EGC was sent for approval to the Supervisory Board of the ECB on 15 December 2020. The Guide was then published on the ECB's website on 12 January 2021, together with this feedback statement and a press release.

2 Comments on and amendments to the draft EGC chapters

2.1 Foreword and general comments

Respondents welcomed the ECB's efforts to improve the transparency and predictability of supervisory actions relating to consolidation projects in the banking sector. Respondents recalled that such projects should be driven by market initiatives and must remain free from political influence.

Respondents also recalled that in the context of the coronavirus (COVID-19) pandemic, it is more important than ever to have a strong banking sector to provide low-cost and reliable funding to the European economy, as well as to support the Green and Digital transitions. In the long term, consolidation is seen as a way to address structural issues in the European banking sector, such as overcapacity and low profitability.

Moreover, respondents pointed out that the presence of multiple authorities and the different processes involved in a consolidation project can be seen as a driver of complexity (for example, the need for close cooperation with the Single Resolution Board (SRB) in the determination of the minimum requirement for own funds and eligible liabilities (MREL) and total loss-absorbing capacity (TLAC)).

In the remaining general comments, respondents drew the ECB's attention to the obstacles to consolidation, in particular to cross-border consolidation, although they acknowledge that some of the issues raised lie outside of the ECB's remit, and that the Guide only focuses on the supervisory approach to consolidation. Emphasis was placed on the obstacles to cross-border mergers and acquisitions (M&A) resulting from both: (1) the existing European Union (EU) prudential framework, and (2) other legal or regulatory requirements:

With regard to the existing EU prudential framework, respondents mentioned issues related to cross-border waivers (liquidity and capital) in the euro area, restrictions on distributions of excess capital, the non-recognition of banking union in global systemically important banks' (G-SIBs) and global systemically important institutions' (G-SIIs) scores, the lack of predictable domestic systemically important banks' (D-SIBs) buffers, the limited recognition of minority interests in consolidated own funds, deferred tax assets and deferred tax liabilities, appropriately balancing operational resilience with the benefits of cross-border group status.

With regard to other legal or regulatory requirements, respondents mentioned obstacles related to the difference in tax regimes between EU Member States, the Anti-money laundering (AMLD V) Directive[1] framework that leaves too much

[1] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (OJ L 156, 19.6.2018, p. 43).

discretion to local regulation, the fact that in some jurisdictions the direct universal succession from one corporate entity to another is not always automatically permitted. It was also mentioned that some elements of the combined buffer requirement, which includes European-specific other systemically important institution (O-SII) buffers and systemic risk buffers, can be set at the discretion of Member States.

In this context, respondents reiterate their support for the ECB to continue calling on the EU co-legislators to overcome these obstacles.

2.2 Introduction to the Guide

	Respondents	Comment	ECB response and analysis	Amendment
0	Luis Garicano, Member of the European Parliament	The respondent made a general comment about how this Guide might trigger consolidation plans within, rather than across, national boundaries, in this way creating "too big to fail" entities. In the absence of significant progress towards a completed banking union, respondents asked the ECB to be careful in encouraging further national consolidation.	The ECB's role is not to promote mergers, but to give certainty to the market and to allow good mergers to happen, i.e. those which are sustainable and promote financial stability. When well designed and executed, business combinations can enhance banks' resilience and profitability, thus strengthening resolvability.[2] The ECB fully takes on board the potential issues raised regarding entities' size and addresses them in close relationship with other authorities in charge of financial stability and resolution, namely the SRB, resolvability being also a key part of risk mitigation. In Europe, there is room for consolidation without entities reaching a size that raise "too big to fail" issues. Too big to fail at European level is not the same as too big to fail at Member State level, so integrating the European banking market is also a way of mitigating this concern. The ECB is in favour of completing banking union, and of other harmonisation efforts which may further contribute to enhancing the level playing field in the Single Market.	Comment rejected.
1	European Banking Federation	Respondents suggested replacing "restructuring" with "realignment" or "reorganisation" in paragraph 1.	Paragraph 1 of the Guide has been modified accordingly with "reorganisation".	Amendment accepted.
2	Austrian Federal Economic Chamber	Respondents argued that the wording of paragraph 1 is misleading and that consolidations will not help to preserve the diversity of business models.	Paragraph 1 of the Guide has been modified to clarify that, when well designed and executed, business combinations can contribute to the overall financial soundness of the banking system without weakening the diversity of different business models.	Clarification accepted.
3	Get Involved	Respondents asked to amend the sentence about the possible positive effects of well-designed and executed business combinations in paragraph 1.	In the original wording, the ECB already acknowledges that sustainable consolidation may help banks achieve economies of scale, become more efficient and improve their capacity to face new challenges such as digitalisation.	Amendment rejected.
4	European Association of Co-operative Banks	First, respondents wished to clarify that the Guide does not establish new regulatory requirements in the introduction. Second, they asked for confirmation that the ECB does not envisage playing a political role in such processes. Third, they argued that the wording of paragraph 1 is misleading and that consolidations will not help to preserve the diversity of business models.	Point 1: Please refer to footnote 2. Point 2: The ECB acknowledges that consolidation is a market process that needs to be promoted by the market. The ECB will not act as a substitute for the market. Point 3: Paragraph 1 of the Guide has been modified to clarify that, when well designed and executed, business combinations can contribute to the overall financial soundness of the banking system without weakening the diversity of different business models.	Two first points of the comment rejected, but clarification accepted for point 3.
5	Get Involved	Respondents suggested adding a sentence in paragraph 2 stating that banks should explain any deviation from the principles set out in the Guide.	Please refer to paragraph 13, which explains that the bank will be under close supervision and therefore any deviation from prudential expectations will be closely monitored.	Addition rejected.
6	Spanish Banking Association (AEB)	Respondents requested more clarity on the consolidation principles to be followed by non-Single Supervisory Mechanism (non-SSM) entities, including reiteration by the ECB of its support for cross-border consolidations.	Paragraph 1 of the Guide has been modified to clarify that the ECB does not favour one type of consolidation over another; it will assess consolidation projects solely on prudential grounds. The ECB cannot provide further clarification on the principles to be followed for non-SSM entities set out in the Guide, as it will apply a case-by-case approach.	Comment rejected but further clarification provided in the Guide.
7	European	Respondents supported the ECB's	The case-by-case approach will indeed be a key	Comment

[2] See Single Resolution Board expectations for ensuring the resolvability of banks engaging in mergers, acquisitions and other corporate transactions, SRB, 7 December 2020

	Association of Co-operative Banks	indication that there is no "one size fits all" approach.	element of the ECB's assessment of consolidation projects.	acknowledged
8	European Banking Federation	Respondents asked the ECB to clarify its approach to assessing M&A cases in the context of resolution.	Clarification on the scope of the Guide has been provided in the introduction. Banks under resolution do not fall within the scope of the Guide.	Addition rejected, but further clarification provided in the Guide.
9	European Banking Federation, Italian Banking Association (ABI), Association for Financial Markets in Europe	Respondents asked for the concept of proportionality to be more clearly specified in terms of its definition and application.	The principle of proportionality as established in the Treaty on Economic Union[3], including its protocols, is further specified in the case law of the Court of Justice of the European Union. The concrete application of the principle of proportionality by the ECB in the context of consolidation in the banking sector depends on case-specific details. No guidance on the concrete application of the principle of proportionality is provided given the differences in each specific case.	Clarification rejected.

3 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) (OJ C 326, 26.10.2012, p. 13).

2.3 Overall approach to the supervisory assessment of consolidation projects

	Respondents	Comment	ECB response and analysis	Amendment
1	European Banking Federation, German Banking Industry Committee	Respondents asked if the ECB can give its preliminary feedback without undue delay or specify a certain number of days/weeks within which the feedback would be given.	The ECB has clarified that the feedback will be provided in accordance with an appropriate timeline in paragraph 9.	Clarification accepted.
2	Get Involved	Respondents asked to add the word "feasible" next to "sustainable" in point (b) of paragraph 6.	By using the word "sustainable", the ECB also implies that the business combination should be feasible in the long term.	Amendment rejected.
3	European Banking Federation	Respondents suggested that more details could be provided on the dedicated team to be established within the ECB that will run the assessment process and on the resulting impact for banks in terms of communication with the ECB.	The ECB will apply a case-by-case approach.	Amendment rejected.
4	European Banking Federation	Respondents asked for more clarification on the format and content of the ECB's feedback on the consolidation project.	The ECB will apply a case-by-case approach.	Clarification rejected.
5	Association for Financial Markets in Europe	Respondents asked to delete the reference in paragraph 8 that could create an obligation to formally inform the ECB in cases where neither national law nor EU regulation provide for such an obligation to do so, nor require a decision from the ECB or a national competent authority (NCA).	Parties involved in a banking consolidation transaction are expected to liaise as soon as possible with the ECB to obtain preliminary feedback on the project, including on whether the ECB's prior approval is required for a transaction. The ECB's expectation on early communication does not affect the relevant disclosure requirements on issuers under the applicable legislation.	Amendment rejected.
6	Association for Financial Markets in Europe	Respondents asked for the relationship between the Market Abuse Regulation and the Guide to be clarified, and for clarification regarding what documents would be requested for the preliminary assessment.	Parties involved in a banking consolidation transaction are expected to liaise as soon as possible with the ECB to obtain preliminary feedback on the project, including on whether the ECB's prior approval is required for a transaction. The ECB's expectation on early communication does not affect the relevant disclosure requirements on issuers under applicable legislation.	Clarification rejected.
7	Austrian Savings Banks Association, European Banking Federation, German Banking Industry Committee, European Savings and Retail Banking Group (ESBG), Austrian Federal Economic Chamber	Respondents asked for clarification that confidentiality agreements are acknowledged by the ECB, which will consider regulatory communication restrictions in the context of the early communication.	The ECB has the statutory power to request information, but also an obligation of professional secrecy in full respect of applicable law.	Clarification rejected.
8	European Banking Federation, German Banking Industry Committee	Respondents proposed mentioning that the processes outlined in the Guide are in line with the rules on notification and assessment of proposed acquisitions provided for in in Article 22 of the Capital Requirements Directive (CRD)[4];	This applies to the application phase. Please refer to paragraph 10 and footnote 10.	Clarification rejected.
9	Austrian Savings	Respondents asked for	The ECB acknowledges that the documents to be	Clarification

[4] 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 Directive 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

	Banks Association, Association for Financial Markets in Europe, German Banking Industry Committee, European Savings and Retail Banking Group (ESBG), Austrian Federal Economic Chamber, European Banking Federation	consideration that not all documents will be up to date or ready for assessment at an early stage.	provided for the assessment will be working documents that can be updated at any time during the assessment process and confirms that it takes into account the external context in which the bank is evolving.	rejected.
10	European Banking Federation	Respondents asked the ECB to clarify that the application phase only takes place if required by national law.	Please refer to footnote 9.	Clarification rejected.
11	Get Involved	Respondents wanted the wording of paragraphs 8, 9 and 12 to be more binding.	Please refer to footnote 2.	Amendment rejected.
12	European Banking Federation	Respondents asked for further clarification on the scope and form that supervisory actions may take in the implementation phase.	In full respect of applicable law, the supervisory response will follow the usual process and will be applied taking a case-by-case approach that is proportionate to the risk identified.	Clarification rejected.
13	Get Involved	Respondents wished to amend paragraph 13 by adding the following sentence: “Should any delay or incapacity to fulfil an initial commitment regarding the integration occurs, the ECB must be informed as soon as possible in order to provide new feedback.”	The enhanced monitoring as described in paragraph 13 implies that the ECB would be informed of any delay and would react accordingly.	Amendment rejected.
14	Austrian Savings Banks Association, European Savings and Retail Banking Group (ESBG), Austrian Federal Economic Chamber	Respondents asked the ECB to clarify that “close supervision by the ECB in the implementation phase” does not result in unreasonably excessive, additional workload and/or unplanned regulatory reviews, which could endanger successful and in-time implementation.	In full respect of the applicable law, the close supervision will follow the usual process and will be applied taking a case-by-case approach that is proportionate to the risk identified.	Clarification rejected.
15	European Banking Federation, Spanish Banking Association (AEB)	Respondents suggested implementing a specific fast-track process for the fit and proper assessment when prospective board members have already been through that ECB process.	The fit and proper assessment is conducted for a moment in time, and new facts or issues could arise that have an impact on the ECB’s previous suitability assessment. Therefore, the ECB will conduct a new fit and proper assessment based on a new application. As soon as the application is complete, the ECB will conclude its assessment as soon possible and within the national timelines foreseen. Recent assessments conducted by the ECB of board members that take up the same position in the same institution will be taken into account and may have a positive impact on the processing time if there are no new facts or issues since the previous assessment.	Amendment rejected.
16	Spanish Banking Association (AEB)	Respondents asked for recognition of a special regime for cases in which a bank in resolution is acquired, in particular a special regime for sale authorisations.	The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide.	Addition rejected, but further clarification provided in the Guide.
17	Spanish Banking Association (AEB)	Respondents asked for clarification on what happens in the event that a bank is under a resolution.	The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide.	Addition rejected, but further clarification provided in the Guide.

2.4 Supervisory expectations regarding consolidation projects

	Respondents	Comment	ECB response and analysis	Amendment
1	European Banking Federation, German Banking Industry Committee	Respondents requested further clarification on mergers and acquisitions under stressed conditions, for example if one or both companies do not meet the requirements prior to the transaction.	Institutions under stressed conditions fall under the scope of the Guide. The ECB will apply a case-by-case approach.	Clarification rejected.
2	Association for Financial Markets in Europe	Respondents wondered if in the “group-wide business plan”, “group” refers to the highest level of consolidation of entities under direct ECB supervision.	Footnote 18 has been added to clarify that the term “group-wide” refers to the prudential scope of consolidation.	Clarification accepted.
3	European Banking Federation	Respondents suggested adding a sentence in paragraph 14 to clarify that the ECB should take into account the specifics of the transaction over the different steps of the supervisory assessment process (for example, in the event of a hostile takeover).	Paragraph 5 already explains that a case-by-case approach based on proportionality will be applied. With regard to hostile takeover, the ECB acknowledges that it can be more difficult for the potential acquirer to provide the ECB with a detailed description of the proposed business combination at an early stage.	Clarification rejected.
4	Association for Financial Markets in Europe	Respondents asked for further clarification on the link between the proportionality principle mentioned in the Guide and the case-by-case approach. For entities already under direct ECB supervision, they suggested mentioning in the Guide that the ECB’s assessment will leverage the existing information to avoid additional administrative burdens.	In line with its objective to avoid imposing further regulatory administrative burden, the ECB leverages existing documentation as much as possible, in full compliance with national law and the principle of proportionality.	Clarification rejected.
5	European Banking Federation	Respondents requested that an addition be made to paragraph 15, bullet point c) specifying that prudential risk planning is typically based on three-year horizon forecasts when referring to “long-term achievable targets.”	In line with the European Banking Authority (EBA) guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)[5], “The sustainability of the institution’s strategy on the basis of its ability to generate acceptable returns over a forward-looking period of at least three years, based on its strategic plans and financial forecasts.”	Addition rejected.
6	Get Involved	Respondents requested clarification of the term “conservatism”, in particular in paragraph 15 (a).	The term “conservatism” is used based on its usual definition.	Clarification rejected.
7	European Banking Federation	Respondents suggested removing the reference to M&A skills in the third bullet point. They argued that it is not relevant in a long-term perspective, as it is not part of core banking activities.	As explained in paragraph 5, the ECB applies a case-by-case approach based on proportionality. It can therefore consider M&As skills relevant in order to assess the collective suitability and adequacy of the board.	Clarification rejected.
8	Get Involved	Respondents suggested adding an example in the last sentence of paragraph 18 about fintech banks that should consider appointing a Chief Information Technology Officer as a member of the executive board.	The ECB sees no need to add an example of how to articulate the governance of an integration process and, for further details on expectations regarding risk data aggregation capabilities and risk reporting practices, suggests referring to the Letter from Andrea Enria, Chair of the Supervisory Board, to the significant institutions on supervisory expectations on risk data aggregation capabilities and risk reporting practices.[6]	Amendment rejected.

5 See EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13).

6 See Supervisory expectations on risk data aggregation capabilities and risk reporting practices, ECB, 14 June 2019 (SSM-2019-0221).

9	Get Involved	Respondents suggested adding climate risk to the non-financial risks to be considered in the third bullet point of paragraph 18. A climate risk management strategy with a climate risk governance framework appears necessary for banks to meet the new sustainability challenges.	The ECB is fully aware of climate- change issues and in November 2020 published its final Guide on climate-related and environmental risks – supervisory expectations relating to risk management and disclosure,[7] so that climate considerations are considered within the relevant supervisory context.	Addition rejected.
10	Get Involved	Respondents suggested that full details on the practices adopted by the new entity for adjusting variable remuneration schemes should be provided.	The ECB will assess the remuneration schemes of each project applying a case-by-case approach that is based on proportionality. If further details are needed, the Joint Supervisory Teams will ask for them.	Addition rejected.
11	European Banking Federation, German Banking Industry Committee	Respondents asked whether in paragraph 20 the ECB is implying that banks should actively incentivise individuals involved in the business combination or, rather, that if such incentivisation were established, it should be in line with the principles described.	Paragraph 20 implies that if incentivisation were established, it should be in line with the principles set out in the paragraph (variable remuneration to be linked to and conditioned by some risk factors).	Amendment rejected.
12	Get Involved	Respondents suggested wording that is binding in paragraphs 16, 17 and 20.	Please refer to footnote 2.	Amendment rejected.
13	European Banking Federation	Respondents requested clarification of the legal basis of the "margin of conservatism" with the aim of ensuring a consistent application by inspection teams.	Paragraph 16 of the Guide has been modified to clarify the ECB's stance on valuation of assets (and liabilities).	Clarification accepted.
14	European Banking Federation	Respondents wanted to make sure that the EBA principles should be followed subject to the "comply or explain" process applied by national supervisors.	Please refer to footnote 2.	Amendment rejected.
15	European Banking Federation	Respondents specified that, depending on the applicable local laws and governance arrangements, consolidation plans are not systematically submitted to the supervisory functions. They suggested the following amendment to the last bullet point in paragraph 18: "the consolidation plan includes the timely integration of the risk management and internal control framework, in particular the mitigation of execution risk. The plan should be closely monitored by the management and/or the supervisory functions."	Please refer to footnote 2. Paragraph 18 has been amended to clarify that, without prejudice to the responsibilities assigned under applicable national law, the implementation of the plan should be managed and closely monitored by the management body in its management function, with strong oversight by the supervisory function, either in the management body or in any other specific body.	Amendment rejected, but further clarification provided in the Guide.
16	Spanish Banking Association (AEB)	Respondents referred to the EBA stress test exercise and asked for consideration of the fact that the performance of a recently acquired resolved bank cannot be taken as a reference for future projections.	Banks under resolution do not fall within the scope of the Guide.	Clarification rejected.

7 See the Guide on climate-related and environmental risks, ECB, November 2020.

2.5 Supervisory approach to key prudential aspects of the consolidation transaction

	Respondents	Comment	ECB response and analysis	Amendment
1	European Banking Federation	Respondents asked to add another element that plays a key role in determining the feasibility of a business combination in paragraph 21, namely "post-merger additional capital requirement and/or capital and liquidity local restrictions."	Please refer to part 3.2 of the Guide on Pillar 2 capital requirements and Pillar 2 Guidance. The ECB favours the free flow of capital and liquidity between SSM entities of the same group and will enforce the applicable regulation.	Addition rejected.
2	European Banking Federation	Respondents asked for clarification on sensitive information in the early communication phase.	The ECB has the statutory power to request information, but also an obligation of professional secrecy in full compliance with applicable law.	Clarification rejected.

2.6 Pillar 2 capital requirements and Pillar 2 guidance

	Respondents	Comment	ECB response and analysis	Amendment
1	European Banking Federation	Respondents wanted more clarification on how the ECB, when assessing the appropriate ex post level of capital, will consider the impact of the frontloading of the costs of the business combination.	Paragraph 26 has been amended to clarify the ECB's stance. The ECB does not intend to adjust the computation of the capital ratio upfront by the costs. The ECB intends to take full consideration of the desynchronisation between the costs and benefits for the capital plan assessment while determining ex post level of capital requirements, not penalising banks with credible trajectories.	Clarification accepted.
2	Spanish Banking Association (AEB), European Banking Federation, Italian Banking Association (ABI), Association for Financial Markets in Europe	Respondents asked for the P2R adjustment to be a re-phrased and clarified, as they feel that IT complexity will be penalising for any banks in the current situation	Given the variety of possible situations, the form taken by significant execution risks is not predictable. Therefore, the reference to the complex IT integration in paragraph 27, that was included for illustrative purposes, has been deleted. The adjustment to the capital requirements will generally be driven by the anticipated overall direction of the risk profile of the combined entity, the resilience of its business model (notably its profitability) and the riskiness of the execution plan.	Amendment rejected, but further clarification provided in the Guide.
3	European Banking Federation	Respondents asked for a specific approach in the context of resolution.	The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide.	Comment rejected, but further clarification provided in the Guide.
4	Association for Financial Markets in Europe, European Banking Federation, European Association of Co-operative Banks, German Banking Industry Committee, Austrian Federal Economic Chamber	Respondents argued that the starting point of the P2R/P2G calculation of the combined entity should be P2R/P2G expressed as a percentage and weighted by the respective risk-weighted assets (RWAs).	Footnote 24 was added in paragraph 27 to clarify this point.	Clarification accepted.

5	Association for Financial Markets in Europe	Respondents asked for clarification on what is intended in the sentence "determination of the ex post capital requirements and guidance should be clarified during the application process."	Paragraph 28 has been amended to clarify the ECB's stance. The ECB intends to clarify the ex post capital requirements and guidance during the application process.	Clarification accepted.
6	Spanish Banking Association (AEB)	Respondents suggested a Pillar 2 adjustment where, despite frontloading of the restructuring costs with the recognition of a liability, this amount is allowed to be re-adjusted to the CET1 base, as long as the costs are not effectively incurred.	The ECB does not intend to adjust the computation of the capital ratio upfront based on the costs. The ECB intends to take full consideration of the desynchronisation between the costs and benefits for the capital plan assessment, while determining ex post level of capital requirements and not penalising banks with credible trajectories.	Clarification rejected.
7	Credit Suisse Group	Respondents suggested that adding in paragraph 26 a transitional (rather than day one) capital recognition of integration costs or an adjustment downwards of the P2R/P2G to reflect the increased sustainability of the combined entity would facilitate consolidation projects and other portfolio rationalisation and optimisation transactions.	The ECB does not intend to adjust the computation of the capital ratio upfront based on the costs. The ECB intends to take full consideration of the desynchronisation between the costs and benefits for the capital plan assessment, while determining ex post level of capital requirements and not penalising banks with credible trajectories.	Addition rejected.
8	Spanish Banking Association (AEB)	Respondents suggested freezing the capital requirements (and guidance) during the integration process and recalibrating them once the transaction is executed.	The adjustment to the capital requirements will generally be driven by the anticipated overall direction of the risk profile of the combined entity, the resilience of its business model (notably its profitability) and the riskiness of the execution plan. The examples provided, if present, would play a role in this assessment. However, the ECB cannot commit to freezing the capital requirements over the entire integration process, as it is generally expected to span too long a period (several years). The aim is to provide stability to the resulting business combination project in principle for at least a year.	Clarification rejected.
9	Get Involved	Respondents feared that the downward adjustment of the P2R/P2G would not be prudent.	The general principle guiding any such downward adjustment is already set out in the Guide, i.e. "the business combination generates an effective improvement in the resilience of the business model and the risk profile of the combined entity."	Clarification rejected.
10	Association for Financial Markets in Europe, Credit Suisse Group	Respondents wanted to see a more explicit policy stance on possible downward adjustments to the ex post Pillar 2 requirements.	Given the variety of possible situations, only general principles can be provided. The adjustment to the capital requirements will generally be driven by the anticipated overall direction of the risk profile of the combined entity, the resilience of its business model (notably its profitability) and the riskiness of the execution plan. Regarding the ex-ante communication, the ECB intends to clarify the ex post capital requirements and guidance during the application process.	Addition rejected.
11	Association for Financial Markets in Europe	Respondents considered that a sentence should be added to paragraph 28 to explain that a new SREP decision for the combined entity should be issued in order to examine whether there is a case for P2R and P2G applying only at the highest level of consolidation of the group in question, particularly where entities within banking union are involved.	With this Guide, ECB Banking Supervision intends to clarify, within the current regulatory framework, the principles underpinning the prudential supervisory approach it takes when determining whether the arrangements implemented by a credit institution resulting from a consolidation ensure the sound management and coverage of its risks. This Guide does not change the ECB's approach to SREP decisions for consolidated groups within banking union.	Addition rejected.
12	German Banking Industry Committee	Respondents would like the statement in paragraph 28 regarding capital requirements and guidance to be more binding.	The ECB intends to clarify the ex post capital requirements and guidance during the application process.	Clarification rejected.
13	Association for Financial Markets in Europe	Respondents would like a phase-in of the P2R on a case-by-case assessment if the bank can afford it.	The ECB cannot commit to freezing the capital requirements over too long a period (several years). The aim is to provide stability to the resulting business combination project in principle for at least a year.	Addition rejected.

14	European Banking Federation	Respondents asked for clarification on the involvement of the SRB in paragraph 9. In particular, they suggested better elaborating on the cooperation with the SRB (MREL and TLAC determination, transitional arrangements and the timeline for SRB involvement in the assessment), so that market participants would obtain more clarity.	Paragraph 29 already expresses the ECB's recognition of the importance of this topic. The ECB and the SRB are committed to cooperating smoothly and as transparently. However, each authority remains independent.	Clarification rejected.
15	Credit Suisse Group, Italian Banking Association (ABI), German Banking Industry Committee	Respondents asked for clarification regarding coordination efforts with the SRB regarding MREL requirements and the timetable post M&A.	The ECB and the SRB are committed to cooperating smoothly and transparently. However, each authority remains independent, and the MREL requirements fall under the SRB's mandate.	Clarification rejected.
16	Credit Suisse Group	Respondents suggested that changes to systemic surcharges post-consolidation should be implemented on a transitional basis instead of the current automatic and immediate switch.	The ECB will liaise with the relevant macroprudential authorities to assess potential issues for financial stability and calibrate the combined buffer requirements.	Addition rejected.

2.7 Badwill

	Respondents	Comment	ECB response and analysis	Amendment
1	European Savings and Retail Banking Group (ESBG), Austrian Federal Economic Chamber, Austrian Savings Banks Association	Respondents considered that badwill should not be perceived as a windfall profit that can be immediately distributed.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance. This stance is based on accounting and regulatory requirements.	Amendment accepted.
2	German Banking Industry Committee	Respondents asked for clarification on how the ECB could monitor and/or prohibit the distribution of badwill profits.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance.	Amendment accepted.
3	Association for Financial Markets in Europe, Austrian Savings Banks Association, Spanish Banking Association (AEB), Credit Suisse Group	Respondents suggested clarifying the concepts "badwill distribution" and "sustainability of the business model" to ensure consistent application. More precisely, respondents asked for clarification on the ECB's legal remit regarding the distribution of badwill through dividends.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance. The ECB may only impose restrictions on dividend distribution on a case-by-case basis.	Amendment accepted.
4	Association for Financial Markets in Europe	Respondents suggested clarifying the role of badwill in paragraph 32 to increase the sustainability of the business model of the combined entity, for instance by increasing provisioning for non-performing loans or to cover transaction or integration costs.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance.	Amendment accepted.
5	European Banking Federation	Respondents suggested amending paragraph 33 to clarify the accounting standards aspects.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance.	Amendment accepted.
6	Association for Financial Markets in Europe	Respondents suggested clarifying the role of badwill in paragraph 33.	Paragraphs 33 and 34 of the Guide have been modified to clarify the ECB's stance.	Amendment accepted.
7	European Banking Federation	Respondents suggested amending paragraph 32 to remove the reference to non-performing loans provisioning due to accounting	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance.	Amendment rejected, but further clarification

		issues and to avoid inappropriate distribution restrictions.		provided in the Guide.
8	Get Involved	Respondents would like the wording of paragraph 32 to be more binding.	Paragraphs 32, 33 and 34 of the Guide have been modified to clarify the ECB's stance. Please refer to footnote 2.	Amendment rejected, but further clarification provided in the Guide.
9	European Banking Federation, German Banking Industry Committee	Respondents asked for clarification that the fair value prudential filter on own credit spread only applies to recurrent fair valuations and does not apply to one-off consolidation fair valuation.	This topic is outside the scope of the Guide.	Clarification rejected.

2.8 Internal models

	Respondents	Comment	ECB response and analysis	Amendment
1	European Savings and Retail Banking Group (ESBG)	Respondents asked for clarification on the situation in which the acquiring entity might decide to use the models of the acquired entity.	Paragraph 36 of the Guide has been modified to clarify the ECB's stance on the use of models.	Clarification accepted.
2	Austrian Savings Banks Association, Austrian Federal Economic Chamber	Respondents asked for more clarity on the expectations for the approach to consolidating the internal models in order to avoid fully fledged roll-out plans that may take years to implement for entities that may already have years of experience of using models.	New applications for internal models for credit risks are not always required. The extension of the use of approved models to the portfolio of the acquired exposures requires an extension to the range of application of the model. Institutions must categorise the materiality of this extension to determine whether this is a material change requiring a supervisory permission.	Clarification rejected.
3	European Banking Federation, Spanish Banking Association (AEB)	Respondents proposed concrete measures to facilitate the extension of the use of the buyer's internal ratings-based (IRB) models to all exposures of an acquired bank as soon as these exposures are migrated to buyer's systems.	The proposal is not in line with applicable law. The discretion contained in the section on internal models is specifically designed to deal with issues related to permissions frequently encountered in consolidations without creating undue volatility in risk-weighted assets (RWAs). However, the ECB still needs to ensure that banks calculate appropriate own funds requirements in line with regulation at all times.	Addition rejected.
4	Association for Financial Markets in Europe	Respondents asked if flexibility on roll-out may be allowed when a third country acquirer purchases an SSM significant institution and intends to roll out its internal models within the SSM entity.	In this case, assuming the supervised entity remains intact, there may not be any need for temporary tolerance arrangements, as the supervised entity could continue to use its approved model on a solo basis; with regard to the consolidated basis, the ECB would not be the competent authority. The ECB would cooperate with the home authority in line with bilateral agreements.	Clarification rejected.
5	German Banking Industry Committee	Respondents asked for clarification that the internal models refer to all risk types, in particular credit, market and operational risk.	Internal models refer to all risk types, including credit, market and operational risk, in full respect of the applicable law, namely the Capital Requirements Regulation (CRR).[8]	Clarification rejected.
6	European Banking Federation, Austrian Savings Banks Association, German Banking Industry Committee, Get Involved	Respondents asked to clarify the time period of paragraph 35 for the transitional period.	The duration of this temporary tolerance will be decided by the ECB considering the specificities of each situation. Sufficient time will be provided for such transition to be performed smoothly and for the updated internal model framework to be at the level of the ECB's standards.	Clarification rejected.

8 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).

7	European Savings and Retail Banking Group (ESBG)	Respondents asked for the temporary period to be at least two years and for the time period to be automatically extended from the time of the formal pre-application to the date on which a Decision Letter is sent by the supervisor.	The granting of this tolerance requires a decision from the ECB and cannot therefore be automatically triggered by an action on the part of the supervised entity. Nevertheless, the intention of the process is to avoid unnecessary RWA volatility arising as a result of requiring use of the standardised approach.	Clarification rejected.
8	Association for Financial Markets in Europe	Respondents invited the ECB to consider the need to prioritise and adapt the planning of any new internal model investigations required accordingly.	The planning of internal model investigations will be conducted following the standard process using all available information in full respect of national law and the principle of proportionality. The prioritisation of missions is part of the process.	Clarification rejected.
9	German Banking Industry Committee	Respondents asked for clarification that, where business combinations reduce operational risk, supervisors could make the approval for internal models swiftly and accommodate a pragmatic approach.	For any new business combination that involves at least one bank using the internal ratings-based approach, an approval of internal models is needed. This approval will be granted based on the implementation of a credible roll-out plan (or through the authorisation of new models in case of a new legal entity). The Guide spells out what can be done on a temporary basis, and subject to conditions, until all necessary new permissions are in place in full respect of national law and the principle of proportionality.	Clarification rejected.
10	European Banking Federation	Respondents suggested an amendment to clarify the legal basis and the type of add-ons mentioned in paragraph 36.	Footnote 34 linked to paragraph 37 has been amended. The proposal to clarify the footnote has been accepted and a principle-based clarification has been provided.	Amendment rejected, but further clarification provided in the Guide.
11	Association for Financial Markets in Europe	Respondents asked the ECB to consider how to facilitate the implementation of the required representative analysis in Chapter 4.2.2 of the EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures[9] in the case of M&A transactions, with the focus being first on the most recent data (e.g. 1-2 years) and potential temporary relief of margins of conservatism.	The proposal is not in line with applicable law. The discretion contained in the section on internal models is specifically designed to deal with issues related to permissions frequently encountered in consolidations without creating undue RWA volatility. However, the ECB still needs to ensure that banks calculate appropriate own funds requirements in line with regulation at all times.	Clarification rejected.
12	Austrian Savings Banks Association, Austrian Federal Economic Chamber, European Savings and Retail Banking Group (ESBG)	Respondents asked for additional guidance on the processes and expectations regarding the various options to use the existing internal models of the two entities depending on the nature of the exposures.	The proposal is not in line with applicable law, as the normal process for extensions of the range of internal models is not affected. Indeed, if an acquirer intends to extend the range of its IRB model to the portfolio of an acquired entity, the acquirer should categorise the materiality of the change in line with Article 2 of Commission Delegated Regulation (EU) No 529/2014[10]. In the event that the change is categorised as material, an application by the acquiring entity is required in line with Article 143(3) of the CRR[11]. As stated in paragraph 36 and subject to conditions, the internal models in place before the merger may still be used for a limited time.	Clarification rejected.

9 See the EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures (EBA/GL/2017/16).

10 Commission Delegated Regulation (EU) No 529/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 (OJ L 148, 20.5.2014, p. 36).

11 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).

2.9 Ongoing supervision of the newly combined entity

	Respondents	Comment	ECB response and analysis	Amendment
1	Association for Financial Markets in Europe, European Banking Federation, German Banking Industry Committee	Respondents asked for the integration plan and the initially planned timeline to be considered as a work in progress. Moreover, they asked for more flexibility regarding the adjustment process, especially when the update is non-material.	The ECB already clarified in footnote 8 of the Guide that the level of detail expected will consider the nature of the transaction. The ECB acknowledges that the documents to be provided for the assessment will be working documents that can be updated at any time during the assessment process and confirms that it takes into account the external context in which the banks is evolving.	Clarification rejected.
2	European Banking Federation	Respondents would welcome more details on the listing of supervisory measures which can be used for risks not covered by Pillar 1.	Paragraph 39 provides for the regulation that defines the supervisory measures under the ECB's supervisory powers and gives the example of Article 16 of the SSM Regulation[12]. The supervisory measures to address risks not covered by Pillar 1 will be similar to those that have been already applied by the ECB in its conduct of day-to-day supervision.	Clarification rejected.
3	German Banking Industry Committee, European Banking Federation	Respondents asked for clarification on the reporting requirements of the combined entity in relation to the business combination implementation and its frequency.	In its objective to avoid imposing further regulatory administrative burden, the ECB leverages existing reporting as much as possible. Some reporting requirements may be requested following the consolidation project as ad-hoc reporting, to be tailored to the specific situation (case-by-case approach).	Clarification rejected.
4	Get Involved	Respondents suggested wording that was more binding on own funds requirements in paragraph 44.	Please refer to footnote 2.	Amendment rejected
5	Get Involved, European Banking Federation	Respondents asked for clarification on the "specific approach" for cases without previous ECB supervision.	The ECB will apply a case-by-case approach.	Clarification rejected.
6	Spanish Banking Association (AEB)	Respondents asked for the Supervisory Examination Programme (SEP) to be adapted to the newly created bank.	Paragraphs 42 and 43 of the Guide have been modified to clarify the ECB's stance on the SEP.	Clarification accepted.
7	Spanish Banking Association (AEB)	Respondents asked for recognition of a special regime for cases in which a bank in resolution is acquired.	The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide.	Addition rejected, but further clarification provided in the Guide.

12 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 (OJ L 287, 29.10.2013, p. 63).

2.10 Application of supervisory approach to consolidation transactions involving less significant institutions

	Respondents	Comment	ECB response and analysis	Amendment
1	European Association of Co-operative Banks, German Banking Industry Committee	Respondents suggested that footnote 35 should be included in paragraph 45 to avoid confusion and to clarify that most of the time less significant institutions (LSIs) do not fall within the scope of the Guide.	Footnote 40 linked to paragraph 46 was originally included to clarify this point on the ECB's approach to consolidation projects involving LSIs.	Amendment rejected.

2.11 Request to add a new paragraph

	Respondents	Comment	ECB response and analysis	Amendment
1	European Association of Co-operative Banks	Respondents suggested adding a section that would clarify the scope of the Guide. In particular, they wished to know in which cases LSIs do not (or do, for example in the event of creation of a new significant institution (SI)) fall within the scope of the Guide.	Please refer to paragraph 46 and footnote 40.	Clarification rejected.
2	Association for Financial Markets in Europe	Respondents asked for clarification in the Guide to make sure that the newly formed entity will receive a revised SEP, including an adjusted on-site inspection schedule, considering the revised supervisory priorities for the new entity along the above lines.	Paragraphs 42 and 43 of the Guide have been modified to clarify the ECB's stance on the SEP.	Clarification accepted.
3	Credit Suisse Group	Respondents asked for more clarity on the timeframes for a merged entity between a single point of entry (SPE) and multiple point of entry (MPE) firm to meet the SRB's resolution policy.	The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide.	Addition rejected, but further clarification provided in the Guide.
4	Association for Financial Markets in Europe	Respondents suggested that the ECB could play an important role in supporting consolidation, in particular cross-border consolidation. They suggested setting out in the Guide the intention to facilitate the completion of banking union, and to increase coordination with other relevant authorities, for example with NCAs, for cross-border liquidity waivers.	The ECB does not favour one type of consolidation over another; it will assess consolidation projects solely on prudential grounds. This has been clarified in the Guide's introduction. The ECB is in favour of the completion of banking union and other harmonisation efforts which may further contribute to enhancing the level playing field in the Single Market. In the case of a cross-border transaction, the ECB will consider the waiver applications in full respect of the applicable regulation.	Addition rejected, but further clarification provided in the Guide.
5	European Banking Federation	Respondents suggested adding a new section 1.2 that would include the following clarification: "The ECB will make full use of the information collected from its day-to-day supervision in each phase of the supervisory assessment" in order to avoid any unnecessary administrative burden for banks in the context of this supervisory assessment.	In its objective to avoid imposing further regulatory administrative burden, the ECB leverages existing documentation as much as possible, in full respect of national law and the principle of proportionality.	Addition rejected.

6	Credit Suisse Group	Respondents asked for confirmation that the ECB acknowledges the broader definition of software and, in general, support in the treatment of digital and technology investments that would allow banks to better compete within the new digital environment.	The ECB will apply the EBA's Regulatory Technical Standards on the prudential treatment of software assets[13].	Addition rejected.
7	Association for Financial Markets in Europe	Respondents asked if the ECB could publish, as an addendum to the final Guide, the relevant processes/steps for qualifying holdings (drawing on the information already published on its website) together with the relevant steps (and contact points) required under national law for business combination authorisations.	Please see footnotes 10 and 11 in paragraph 10 of the Guide.	Addition rejected.
8	Association for Financial Markets in Europe	Respondents asked for explicit recognition of the coordinating role of the ECB in the Guide. They suggested that authorisation processes could be simplified where the ultimate controlling entity does not change and a fast-track procedure for when the acquired entity is an entity in resolution. Finally, respondents would like to reduce the time required to complete the authorisation process.	In its action, the ECB will fully cooperate not only with the NCA involved from the start in the joint procedures, but also with the SRB and any other authority involved in the project. The scope of the Guide has been clarified in the introduction. Banks under resolution do not fall within the scope of the Guide. Finally regarding authorisation processes, the timeline is applied on a case-by-case basis.	Addition rejected.
9	European Banking Federation, German Banking Industry Committee	Respondents suggested adding a section in the Guide on systemic identification scoring and waiver rules, for example, using granted waivers during an appropriate transitional period and Single Resolution Mechanism (SRM) recognition.	In the event of cross-border transactions, the ECB will consider the waiver applications in full respect of the applicable regulation.	Addition rejected.
10	German Banking Industry Committee, European Banking Federation	Respondents suggested adding a section to acknowledge that, in the event of a business combination, large credit exposure limits could be exceeded and this excess should be tolerated on a temporary basis to avoid an unnecessary supervisory burden.	Article 396(1) of the CRR[14] already provides the grounds for when large exposures limits are exceeded owing to exceptional circumstances.	Addition rejected.
11	Credit Suisse Group	Respondents wanted the ECB to support in-flight initiatives.	This topic is outside the scope of the Guide.	Addition rejected.
12	Association for Financial Markets in Europe	Respondents asked for more clarification on the process and timeline for providing the recovery plan with the updated MREL target. They ask for an appropriate implementation period for any changes to MREL (or other aspects of resolution planning).	This comes under the remit of the SRB.	Addition rejected.

13 See the EBA regulatory technical standards on the prudential treatment of software assets (EBA/RTS/2020/07).

14 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).

13	Spanish Banking Association (AEB), European Banking Federation	Respondents suggested adding a new section so that the ECB can give banks some flexibility in managing the restructuring of their capital structure in order to minimise impediments to M&A activity. The same considerations are also raised for the MREL requirements, where the resolution strategy of the group could be adapted to facilitate an acquisition.	The ECB has no mandate to change the CRR. Complex group structures and fragmented capital structures should be avoided in merger design, and if this is not possible, cautious treatment of minorities according to the CRR is still supported. For MREL, the SRB is competent.	Addition rejected.
14	Association for Financial Markets in Europe	Respondents pointed out that the non-inclusion of surplus capital pertaining to minority interests in consolidated own funds represents a substantial impediment to M&A. The respondents asked the ECB to consider whether it can use its supervisory powers within the existing regulatory framework to alleviate this, assuming that the appropriate conditions on the loss-absorbing nature of the surplus capital are confirmed. They made several proposals.	The ECB has no mandate to override the CRR; minorities that existed before will not lead to a (new) impediment. Minorities that emerge from the merger may be detrimental, but this should be tackled through merger design and structuring, as fragmented and complex group structures also create impediments to the soundness of the envisaged structure.	Addition rejected.
15	Spanish Banking Association (AEB)	Respondents requested the inclusion of a new paragraph to provide for some discretion in the application of buffers in consolidation processes, as the combined entity might move to a higher bucket in terms of G-SIBs capital buffer allocations.	The regulation foresees specific capital requirements for systemically important institutions. However, the ECB is liaising with the Financial Stability Board, which is instituting an integrated set of policy measures to reduce the probability and impact of the failure of systemically important financial institutions.	Addition rejected.

Postal address 60640 Frankfurt am Main, Germany
Telephone +49 69 1344 0
Website www.ecb.europa.eu

For specific terminology please refer to the ECB glossary (available in English only).