



**Draft Guidelines  
specifying the criteria to assess the exceptional cases when  
institutions exceed the LE limits of Article 395(1) of the CRR  
and the time and measures to return to compliance  
pursuant to Article 396(3) of the CRR**

Public hearing

30 March 2021

# Housekeeping rules

- Should you need **assistance** or would like to **intervene**:
  1. **write on WebEx chat** to any of the hosts or publicly;
  2. or, **raise your hand on WebEx**.
- **To avoid background noise**, please **stay muted** unless you take the floor.
- To increase audio quality please turn off video streaming.
- **Please identify yourself** (if you do not use full name on WebEx).
- For the **Q&A session**, please **write on the WebEx chat** to any of the **hosts for taking the floor** for a question.

# Agenda



- 1 Background and rationale
- 2 The criteria to determine exceptional cases of Article 396(1) of the CRR
- 3 Information to provide to the competent authorities
- 4 Criteria to determine the time to return to compliance
- 5 Measures to ensure the timely return to compliance
- 6 Next steps
- 7 Overview of questions for consultation

# 1. Background and rationale

- The CRR was amended by Regulation (EU) 2019/876, published on 7 June 2019 in the OJEU.
- Article 396 was amended by requiring that, where competent authorities allow an institution to **exceed the LE limits more than 3 months**, the institution needs to present a **plan of measures** to return to compliance with the limit and **within the period agreed** by the competent authority, who shall monitor it.
- A new mandate was also inserted in the CRR whereby the EBA should issue **guidelines to specify how competent authorities may determine:**
  - The **exceptional cases** of breaches of the LE limits
  - The **time** considered appropriate to return to compliance
  - The **measure** to ensure the timely return to compliance
- The EBA has committed to issue these guidelines by **December 2021**.

## 2. The criteria to determine the exceptional cases

- A breach of LE limits is always considered by a competent authority (CA) as an **exceptional case**. The LE limits have to be met **at all times**.
- To **assess a breach**, a CA shall consider:
  - **Frequency and number** of breaches (with some quantitative criteria to act as a guide)
  - **Predictability** of the breach
  - **Reasons beyond the control** of the institution that did not prevent the breach, e.g.:
    - An unexpected and substantial decrease of own funds
    - An exposure ceases to be eligible for an exemption
    - A court ruling or administrative decision that leads to a different interpretation of the applicable LE-regulatory framework

### 3. Information to provide to the competent authorities

When a breach occurs, an institution should provide the following information to a CA alongside the **value of the exposure**:

- the **amount of the excess and magnitude of the breach** in relation to Tier 1 capital,
- **name of the client** concerned and, where applicable, **group of connected clients**,
- **date** of the breach,
- **description of available collateral**, both CRR eligible and ineligible, if any,
- detailed explanation on the **reasons for the breach**,
- **remedial actions** already implemented or planned, and
- **expected time** needed to return to compliance with the LE limits.

## 4. Criteria to determine the time to return to compliance

- Further to the assessment of the LE breach, the CA will **decide the time to give to the institution to return to compliance.**
- If the assessment concludes that the breach was **repetitive** or could lead to a **major impact on the institution's financial situation**, the CA should not allow more than three months.
- The time afforded to an institution should be **commensurate with the rapid restoration** of the LE limits.
- **General rule: no more than one year.**

## 4. Criteria to determine the time to return to compliance

Criteria to decide the appropriate time to return to compliance:

- **record** of breaches;
- **promptness** of notifying the breach;
- **reason(s)** for the breach;
- the **systemic nature, complexity** and **magnitude** of the breach;
- possible **impact on the overall financial situation** of the institution;
- overall **risk concentration** in the banking book of the institution across different counterparties;
- **type of client** or group of connected clients and its **creditworthiness**;
- the **measures already implemented** to resolve the breach.

## 5. Measures to ensure the timely return to compliance

An institution shall present a **compliance plan** when it has been granted **more than three months** to return to compliance with the LE limits.

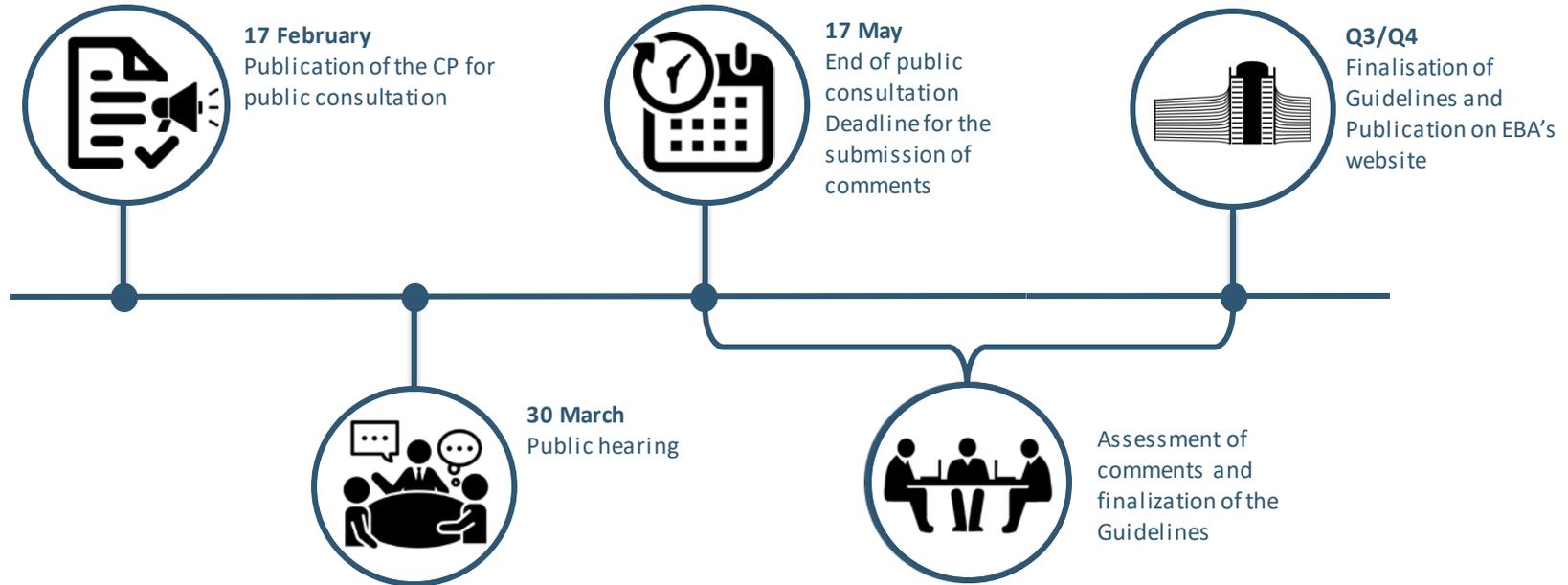
The compliance plan should include **at least** the following:

- **arrangements** to reduce the concerned exposure(s);
- measures to **increase the institution's own funds**, where necessary;
- arrangements to **reinforce internal risk management** and **control processes**;
- any necessary **amendments** to the institution's **compliance policy**;
- **appropriate procedures** to ensure the timely implementation of the measures; and
- a **detailed timetable** to implement the measures, including the intended date of returning to compliance.

## 5. Measures to ensure the timely return to compliance

- The CA shall assess the compliance plan (or otherwise, the measures to return to compliance if the institution is given less than three months to return to compliance) to ensure that they are **appropriate, sufficient and feasible to return** to compliance on a **stable and continuous basis**, and that the **detailed timeframe** is appropriately **set up** and **achievable**.
- **Close monitoring** of the CA to ascertain the **effective** and **timely** return to compliance (**implementation of milestones**).
- Such monitoring shall be **adequate and proportional** to the cause and size of the breach, its potential impact on the institution and the specificities of the compliance plan and measures in case of periods of less than three months to return to compliance.
- In view of the progress of the compliance plan or measures to return to compliance, the CA can request the institution to conduct an **internal** or **external audit** regarding internal control and risk management processes.

## 6. Next steps



## 7. Overview of questions for consultation

Section	Question
<b>Criteria to determine a breach of LE limits</b>	<b>Q 1</b> Do you agree with the three criteria developed in the Guidelines to assess a breach of the large exposure limits?
	<b>Q 2</b> Is there anything in particular that should be developed further in the guidelines to provide greater clarity on each of the three criteria?
	<b>Q 3</b> What are your views on the quantitative criteria included in paragraphs 16 and 17? Do you think that they can provide good guidance to competent authorities to assess a breach?
	<b>Q 4</b> In particular on the criterion “reasons beyond control of the institution”, do you think that the cases included in the guidelines reflect accurately current practices?
<b>Information to provide to a CA</b>	<b>Q 5</b> Do you have any comments on the additional information that an institution should submit to the competent authority when a breach of the large exposure limits has occurred?
<b>Time to return to compliance</b>	<b>Q 6</b> Do you agree with the general principle that compliance with the large exposure limits should occur within one year?
	<b>Q 7</b> What cases could justify a period longer than one year to return to compliance?
	<b>Q 8</b> Paragraph 30 lists a number of elements that a competent authority should consider when deciding the specific time to return to compliance with the large exposure limits. Do you agree with them? Should the guidelines include further element/s? If your answer is yes, please elaborate.
<b>Measures to return to compliance</b>	<b>Q 9</b> Do you agree with the main content of the compliance plan as set out in paragraph 40 in order to ensure return to compliance or are some measures missing? Alternatively, do you think that some of the measures would not be necessary? Please elaborate further in either case.
	<b>Q 10</b> Should the guidelines benefit from including further procedural details?



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