



Brussels, 31.5.2017
C(2017) 3522 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 31.5.2017

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the additional objective criteria for the application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 422(10) and Article 425(6) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts further specifying the additional objective criteria as set out in Articles 29(2) and 34(2) of Commission Delegated Regulation (EU) 2015/61 which have to be met for the application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme (IPS) with the approval of the competent authorities.

In accordance with the fifth subparagraph of Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in that Article.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the draft regulatory technical standards submitted to the Commission in accordance with Article 422(10) and Article 425(6) of the Regulation. A consultation paper was published on the EBA internet site on 18 November 2015, and the consultation closed on 13 January 2016 where the EBA's Banking Stakeholder Group was also invited in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act further specify the additional objective criteria established in Articles 29(2) and 34(2) of Commission Delegated Regulation (EU) No 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, by setting out the objective and stringent conditions for their compliance.

The additional objective criteria set out in Articles 29(2) and 34(2) of Commission Delegated Regulation (EU) No 2015/61 of 10 October 2014 are based on the EBA Report on impact assessment for liquidity measures, under the mandate of Article 509(1) and (2) of the Regulation, published and submitted to the European Commission in December 2013. Their specification in the provisions of this delegated act is also based on the content of that report.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹ and in particular Article 422(10) and Article 425(6) thereof,

Whereas:

- (1) The application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme (IPS), as provided for in Articles 29 and 34 of Commission Delegated Regulation (EU) 2015/61², is limited to those cases where the necessary safeguards are in place and only with the prior approval of the competent authorities. These safeguards are provided for in Articles 29(2) and 34(2) of Delegated Regulation (EU) 2015/61 in terms of additional objective criteria to be met in the context of these transactions. Those safeguards should be further specified so as to clearly define the conditions for their compliance.
- (2) It should be ensured that the application of such preferential rates does not endanger the liquidity soundness of the liquidity provider and that it effectively alleviates the compliance with the liquidity coverage ratio of the liquidity receiver. A low liquidity risk profile should be demonstrated by the credit institutions' compliance with the liquidity coverage ratio and any other liquidity-related supervisory requirements and measures applied pursuant to Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU of the European Parliament and of the Council³, together with the competent authorities' assessment, according to the latest supervisory review and evaluation process, that the institution's liquidity position poses a low level of risk, as objective references of their liquidity positions.

¹ OJ L 321, 30.11.2013, p.6.

² 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).

³ 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 firm, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338).

- (3) The effectiveness of the liquidity support within a group or an IPS on a cross-border basis should be guaranteed by a sound contractual framework evidenced by a legal opinion approved by the credit institutions' management body. A minimum remaining maturity of the line should ensure that the commitment is not punctual for a specific transaction but durable over a minimum period of time.
- (4) It should be ensured that the liquidity provider can provide the liquidity receiver with the necessary liquidity support in a timely manner, even in times of stress. For these purposes, the liquidity provider should monitor the liquidity position of the liquidity receiver and any contingency funding plans of the liquidity provider and receiver should address the effects of applying a preferential outflow or inflow rate.
- (5) The conditions for compliance with the additional objective criteria set out in Article 29(2) and Article 34(2) of Delegated Regulation (EU) 2015/61 should be aimed at providing sufficient ground to expect a higher than normal cross-border liquidity flows within a group or an IPS in stress while not hampering the efficiency and effectiveness of a model where the liquidity is normally centrally managed. In certain specific cases of non-compliance with those conditions, namely where the liquidity provider or receiver does not meet or expects not to meet the liquidity coverage ratio or any liquidity related supervisory requirements or measures, or where the remaining maturity of the liquidity or credit line falls below the prescribed minimum or a notice of cancellation of the line is given, the relevant competent authorities should reassess whether the application of preferential liquidity outflow or inflow rates may be continued with the aim of avoiding the unintended consequences that an automatic suspension of the preferential treatment might cause in terms of procyclical and contagion effects.
- (6) The further specification of those additional objective criteria should not alter the responsibility of the credit institutions – as liquidity provider or liquidity receiver – to manage their liquidity risk on a prudent basis.
- (7) The further specification of those additional objective criteria should also be aimed at providing competent authorities with sufficient tools to determine the application of a preferential outflow or inflow rate.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (9) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, in accordance with Article 10 of Regulation (EU) N0 1093/2010 of the European Parliament and of the Council⁴, and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331. 15.12.2010, p.12).

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation further specifies the additional objective criteria laid down in Article 29(2) and Article 34(2) of Delegated Regulation (EU) 2015/61 for the purposes of the application of the waiver set out therein.

Article 2
Low liquidity risk profile of the liquidity provider and receiver

1. The low liquidity risk profile referred to in point (a) of Article 29(2) and in point (a) of Article 34(2) of Delegated Regulation (EU) 2015/61 shall satisfy the following conditions:
 - (a) the liquidity provider and receiver have complied with the required level of the liquidity coverage ratio as set out in Articles 4 and 38 of Delegated Regulation (EU) 2015/61, as well as any liquidity-related supervisory requirements or measures applied pursuant to Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU, on an on-going basis and for at least twelve months prior to the authorisation to apply the preferential outflow or inflow rate for undrawn credit or liquidity facilities pursuant to Article 29(1) and Article 34(1) of Delegated Regulation (EU) 2015/61.
 - (b) the liquidity provider and receiver's liquidity positions pose a low level of risk according to the latest supervisory review and evaluation process conducted in accordance with Title VII, Chapter 2, Section III of Directive 2013/36/EU.

For the purposes of determining whether the condition referred to in point (a) of this paragraph is satisfied, the required level of the liquidity coverage ratio shall be calculated on the basis that the preferential liquidity outflow or inflow rate applied during the twelve month period referred to in that point.

2. Where the liquidity provider or receiver has been granted permission from the relevant competent authorities to waive the condition set out in point (d) of Article 29(1) and point (d) of Article 34(1) of Delegated Regulation (EU) 2015/61 and a liquidity provider or receiver does not meet or expects not to meet the required level of the liquidity coverage ratio set out in Articles 4 and 38 of that Delegated Regulation, or any liquidity related supervisory requirements or measures applied under Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU, it shall immediately notify the relevant competent authorities and include a description of the effects of such failure to meet that liquidity coverage ratio or any liquidity related supervisory requirements or measures on the corresponding preferential outflow or inflow rate applied to its counterparty.
3. Where the liquidity provider or receiver has been granted permission from the relevant competent authorities to waive the condition set out in point (d) of Article 29(1) and point (d) of Article 34(1) of Delegated Regulation (EU) 2015/61 and a liquidity provider or receiver does not meet or expects not to meet the required level of the liquidity coverage ratio set out in that Delegated Regulation, the notification

referred to in paragraph 2 shall be included in the immediate notification and restoration plan required under Article 414 of Regulation (EU) No 575/2013.

4. In the cases referred to in paragraphs 2 and 3, the relevant competent authorities shall determine whether the preferential outflow or inflow rates continue to apply in accordance with the process referred to in point (b) of Article 20(1) of Regulation (EU) No 575/2013.

Article 3

Legally binding agreements and commitments between the group entities regarding the undrawn credit or liquidity line

1. The legally binding agreements and commitments referred to in point (b) of Article 29(2) and in point (b) of Article 34(2) of Delegated Regulation (EU) 2015/61 shall satisfy the following conditions:
 - (a) the credit or liquidity line is a committed line which is legally and practically available at any time, for the duration of the facility, even during a period of stress, on a cross-border basis. It is specifically dedicated to the application of the preferential outflow or inflow rate provided for in Articles 29 and 34 of Delegated Regulation (EU) 2015/61 and available on demand. For these purposes, credit institutions have conducted sufficient legal review supported by a written and reasoned legal opinion approved by their management bodies, confirming the legal validity and enforceability of the credit or liquidity line agreement or commitment in all relevant jurisdictions;
 - (b) the currency denomination of the committed credit or liquidity line is consistent with the distribution by currency of the net liquidity outflows of the liquidity receiver that are unrelated to the line;
 - (c) the amount and the cost of the committed credit or liquidity line are clearly specified in the relevant contract;
 - (d) the agreements and commitments do not contain any clause that would allow the liquidity provider to:
 - (i) require any conditions to be fulfilled before the liquidity is provided;
 - (ii) withdraw from its obligations to fulfil these agreements and commitments;
 - (iii) change the terms of the agreements and commitments without prior approval from the relevant competent authorities.
 - (e) the credit or liquidity line has a remaining maturity of over six months at all times. If the credit or liquidity line does not have a maturity date, it has a minimum notice period for cancellation of six months.
2. The legal review referred to in point (a) of paragraph 1 shall be regularly updated to reflect any changes in the laws of all relevant jurisdictions. Competent authorities shall be notified of the outcome of these legal reviews.
3. The amount of the credit or liquidity line referred to in point (c) of paragraph 1 shall not be revised without the prior consent of the relevant competent authorities.
4. If the remaining maturity referred to in point (e) of paragraph 1 falls below six months or a notice for cancellation of the credit or liquidity line is given, credit institutions shall immediately notify the relevant competent authorities. Those

authorities shall determine whether the preferential outflow or inflow rates continue to apply in accordance with the process referred to in point (b) of Article 20(1) of Regulation (EU) No 575/2013.

Article 4

Consideration of the liquidity risk profile of the liquidity receiver in the liquidity risk management of the liquidity provider

The liquidity risk profile of the liquidity receiver is taken into account in the liquidity risk management of the liquidity provider as referred to in point (c) of Article 29(2) and in point (c) of Article 34(2) of Delegated Regulation (EU) 2015/61 where the following conditions are satisfied:

- (a) the liquidity provider monitors and oversees the liquidity position of the receiver on a daily basis. In case of correspondent banking, the monitoring and the oversight of the liquidity position of the receiver may be limited to the balances of the vostro accounts of the liquidity receiver.
- (b) the effects of the preferential outflow or inflow rate are fully considered and integrated into the contingency funding plans of the liquidity provider and the liquidity receiver, which take into account potential impediments to the transfer of such liquidity and assess the time needed to implement such a transfer. For these purposes, the liquidity provider demonstrates to the relevant competent authorities that it can reasonably be expected to continue to provide the liquidity facility to the liquidity receiver even in times of stress, without having a material adverse impact on its own liquidity position. The contingency funding plan of the liquidity provider ensures that it does not rely on the liquidity needed to honour the committed credit or liquidity line of the liquidity receiver.
- (c) the contingency funding plan of the liquidity provider takes into account the preferential outflow or inflow rate in order to ensure its ability to provide the necessary liquidity when required.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31.5.2017

For the Commission
The President
Jean-Claude JUNCKER