Annex 8

Sample Text

Tenderers must edit and proofread in track changes and with comments the sample text provided below according to the description specified in Section 6 “Subject of the Contract”.

Sample Text:

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| Consultation Paper |
| Draft Regulatory Technical Standards on the specification of the additional objective criteria referred to in Articles 29 (2) and 34 (2) of Commission Delegated Regulation (EU) No 2015/61 [the delegated act specifying the liquidity coverage ratio for credit institutions, pursuant to Article 460 of Regulation (EU) No 575/2013] under Article 422 (10) and 425(6) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR) |

1. Executive Summary

In the area of liquidity provisions, Regulation (EU) No 575/2013 (CRR) acknowledges the potential for intra-group financial support under stress conditions when some of the institutions belonging to the same group experience liquidity difficulties. Accordingly a preferential treatment (higher inflows and/or lower outflows) in the calculation of the liquidity coverage requirement for intra-group liquidity flows may be applicable under the necessary safeguards, objective conditions and subject to agreement among competent authorities.

Commission Delegated Regulation (EU) No 2015/61[[1]](#footnote-2) (LCR Delegated Act), specifies additional objective criteria for this preferential treatment for flows in the context of credit and liquidity facilities within a group or an institutional protection scheme (IPS) under similar conditions as the CRR and particularly for their cross-border transactions when the credit institutions and the counterparty are established in different Member States. The proposal contained in the Delegated Act builds very much on previous work done by the EBA[[2]](#footnote-3).

The CRR, in Article 422 (10) and Article 425 (6), mandates the EBA to develop draft regulatory technical standards to further specify such additional objective criteria. This Consultation Paper contains draft regulatory technical standards for this purpose. In particular, the proposed criteria elaborate on the following aspects:

1. The liquidity provider and receiver shall present a low liquidity risk profile. The low liquidity risk profile is proposed to be objectively determined by the compliance with the LCR and the Pillar 2 requirements as well as by the outcome of the latest supervisory review and evaluation process.
2. There are legally binding agreements and commitments between group entities regarding the credit or liquidity line. An external written and reasoned legal opinion is required to be notified to the competent authorities to certify that the line is a committed line legally and practically available at any time. The line is also subject to other requirements such as currency denomination or maturity date to reinforce the appropriateness of the line for these purposes.
3. The liquidity risk profile of the liquidity receiver has been adequately taken into account in the liquidity risk management of the liquidity provider. The liquidity provider shall monitor and oversee the liquidity position of the receiver at least on a daily basis. The contingency funding plan of the liquidity provider shall ensure that from this monitoring the liquidity support to the receiver is guaranteed even in times of stress.
4. Background and rationale

The LCR Delegated Act, by way of Recital 15, states that “*It may not be assumed that credit institutions will always receive liquidity support from other undertakings belonging to the same group or to the same institutional protection scheme when they experience difficulties in meeting their payment obligations. However, where no waiver has been granted for the application of the liquidity coverage ratio at individual level in accordance with Articles 8 or 10 of Regulation (EU) No 575/2013, liquidity flows between two credit institutions belonging to the same group or to the same institutional protection scheme should in principle receive symmetrical inflow and outflow rates to avoid the loss of liquidity in the internal market, provided that all necessary safeguards are in place and only with the prior approval of the competent authorities involved. Such preferential treatment should only be given to cross-border flows on the basis of additional objective criteria, including the low liquidity risk profile of the provider and the receiver.”*

Therefore in the context of European credit institutions whose liquidity is managed centrally at a group or IPS level or whose day to day operational liquidity management is partially or fully carried out on their behalf by other members of the group, the CRR and the LCR Delegated Act, in reflection of expected support within a group or IPS under stressed circumstances and the single market, provide credit institutions with some special treatments which can alleviate their LCR requirements:

Waiver

Article 8 of the CRR and Article 2(2) of the LCR Delegated Act envisage the possibility for the involved competent authorities to waive the application of liquidity requirements to individual credit institutions subject to stringent conditions and the individual agreement of all competent authorities involved. In such cases, a liquidity sub-group is formed and compliance with some or all of CRR Part VI (Liquidity) obligations at the individual level can be waived while compliance at the level of the liquidity sub-group will be required. This waiver has the potential to facilitate liquidity management across a banking group.

Exemption from the inflow cap

Article 425(1) of the CRR and Article 33(2) of the LCR Delegated Act provide credit institutions with the possibility, subject to prior approval of the competent authority, to fully or partially exempt from the 75% inflow cap (which is calculated as a percentage of total liquidity outflows) those inflows where *inter alia* the provider is its parent or a subsidiary or another subsidiary of the same parent or linked to the credit institution by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC or an institution of the same IPS.

Preferential treatment

According to Art 422(8) and Art 425(4) of the CRR, if a set of conditions are complied with, competent authorities can, on a case by case basis, grant a preferential treatment for those transactions within a group or an IPS by applying higher inflow rates (in the case of the liquidity receiver) or lower outflow rates (in the case of the liquidity provider).

If the transactions within a group or an IPS constitute cross-border positions (when the institution and the counterparty are established in different Member States) then Article 422 (9) and Article 425 (5) of the CRR clarify that the application of the preferential treatment is also conditional on the compliance with additional objective criteria to be specified in the LCR Delegated Act.

Similar to the CRR, although limited to undrawn credit or liquidity facilities, the LCR Delegated Act, by way of Article 29 (1) and Article 34 (1), provides the possibility for a preferential treatment for transactions of credit institutions within a group or an IPS. As in the CRR the application will be granted by competent authorities on a case by case basis, and will be subject to the fulfilment of conditions similar to those established in the CRR.

In regard of cross-border transactions (when the institution and the counterparty are established in different Member States), Article 29 (2) and Article 34 (2 and 3) of the LCR Delegated Act provide for the following additional objective criteria that have to be fulfilled on top of the normal conditions:

1. The liquidity provider and receiver present a low liquidity risk profile,
2. There are legally binding agreements and commitments between group entities regarding the credit or liquidity line;
3. The liquidity risk profile of the liquidity receiver has been adequately taken into account in the liquidity risk management of the liquidity provider.

These additional criteria of the LCR Delegated Act have been based on the EBA Report on impact assessment for liquidity measures, under the mandate of Article 509 (1) and (2) of the CRR, as published and submitted to the European Commission in December 2013.

The EBA is mandated by Article 422 (10) and Article 425 (6) of the CRR to develop draft regulatory technical standards to further specify such additional objective criteria. To this end the EBA has developed, for each of the additional objective criteria specified by the Delegated Act as cited in a), b) and c) above, some further conditions. In a context of stress where liquidity support within a group or an IPS cannot be taken for granted, the objective criteria represent the necessary safeguards under which competent authorities can be adequately confident that the receiving entity would receive the group support without negatively impacting the stability of the provider, even under circumstances of stress.

In particular, the EBA specifies how a low liquidity risk profile should be assessed, taking into account Pillar 1 and Pillar 2 requirements. In addition, several conditions relating to the nature, currency, amount and cost, conditionality or maturity of the internal agreements and commitments are specified. Finally, the EBA has further elaborated on how the liquidity risk management of the liquidity provider should appropriately consider the liquidity risk profile of the liquidity receiver, taking into account in particular the frequency of calculation of the liquidity position of the liquidity receiver and the integration in the contingency funding plans.

1. [the delegated act specifying the liquidity coverage ratio for credit institutions, pursuant to Article 460 of Regulation (EU) No 575/2013] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:011:FULL&from=EN> [↑](#footnote-ref-2)
2. <http://www.eba.europa.eu/-/eba-publishes-reports-on-liquidity> [↑](#footnote-ref-3)