EBA/RTS/2016/04

27 July 2016

# EBA FINAL 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) under Articles 422(10) and 425(6) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)

# Contents

# 1. Executive Summary

In the area of liquidity provisions, Regulation (EU) No 575/2013 (CRR) acknowledges the potential for intra-group financial support under stressed 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 and objective conditions and subject to agreement among competent authorities.

Commission Delegated Regulation (EU) No 2015/61[1] (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 to those set out in the CRR and particularly for cross-border transactions when the credit institution and the counterparty are established in different Member States. The criteria contained in the LCR Delegated Act very much build on previous work done by the EBA[2].

The CRR, in Articles 422(10) and 425(6), mandates the EBA to develop draft regulatory technical standards to further specify such additional objective criteria. In particular, the proposed criteria elaborate on the following aspects:

a) The liquidity provider and receiver shall present a low liquidity risk profile. The low liquidity risk profile is proposed to be objectively determined by compliance with the LCR and the Pillar 2 requirements as well as by the outcome of the latest supervisory review and evaluation process.

b) There are legally binding agreements and commitments between group entities regarding the credit or liquidity line. A written and reasoned legal opinion approved by the credit institutions' management body 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.

c) 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 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.

[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

[2] http://www.eba.europa.eu/-/eba-publishes-reports-on-liquidity

# 2. Background and rationale

The LCR Delegated Act, in 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 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 the expected support within a group or IPS under stressed circumstances and the single market, provide credit institutions with some types of special treatment 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 competent authorities involved 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 the 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 the institution's 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 Articles 422(8) and 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 Articles 422(9) and 425(5) of the CRR clarify that the application of the preferential treatment is also conditional on compliance with additional objective criteria to be specified in the LCR Delegated Act.

Similarly to the CRR, although limiting such treatment to undrawn credit or liquidity facilities, the LCR Delegated Act, in Articles 29(1) and 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 of such treatment is to 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.

As regards 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:

a) The liquidity provider and receiver present a low liquidity risk profile.

b) There are legally binding agreements and commitments between group entities regarding the credit or liquidity line.

c) 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 are 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 Articles 422(10) and 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, listed as 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 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 into the contingency funding plans.

# 3. EBA final 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) under Articles 422(10) and 425(6) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)

**COMMISSION DELEGATED REGULATION (EU) …/..**

**of XXX**

**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)

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 648/2012[3] 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) 2015/61[4], 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 Council[5], 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.

(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 the compliance with the additional objective criteria set out in Articles 29(2) and 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

[3] OJ L 321, 30.11.2013, p.6.

[4] 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).

[5] 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).

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 1093/2010of the European Parliament and of the Council[6], and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

*Article 1*
*Subject matter*

This Regulation further specifies the additional objective criteria laid down in Articles 29(2) and 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

[6] 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).

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 Articles 29(1) and 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 Articles 29(1) and 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 Articles 29(1) and 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 Delegated Regulation (EU) 2015/61, 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 decide whether the preferential outflow or inflow rates will 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 must be 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 must 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 contract governing this line.

(d) the agreements and commitments shall 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 must have 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 must 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. These authorities shall decide whether the preferential outflow or inflow rates will 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 adequately 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 when 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 must be able to demonstrate 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 must ensure 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,

*For the Commission*
*The President*
*On behalf of the President*

# 4. Accompanying documents

## 4.1 Draft Cost-Benefit Analysis/Impact Assessment

### Introduction

Articles 422(10) and 425(6) of the CRR mandate the EBA to specify the additional objective criteria to be fulfilled by credit institutions if they are to benefit from a preferential treatment under the LCR (higher inflow rates, lower outflow rates) for intra-group funding, including for cross-border transactions.

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This analysis presents an impact assessment of the policy options considered in these RTS. The lack of systematic publicly available data on intra-group transactions presents a difficulty in analysing the role this intra-group funding plays in stabilising/destabilising the banking sector under stressed conditions and its impact on the liquidity risk profiles of institutions. As a result, the present impact assessment is mainly qualitative.

### Background

#### Cross-border activities are significant in the EU banking sector

Cross-border activities are very significant in the EU due to the legislative efforts that have been made to create a single market and due to the common currency within the euro area. Around 28% of the credit institutions that operate in the EU are foreign-controlled subsidiaries and branches and they account for 22% of total EU banking assets (see Table 1).

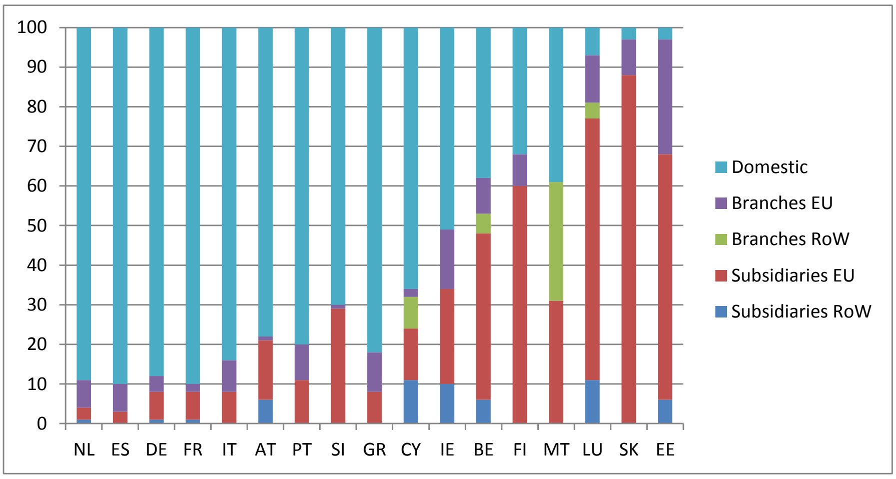
Table 1: Number and total assets of credit institutions operating in the EU (billion EUR)

| | **Number of credit institutions** | | | **Total assets** | | |
|---|---|---|---|---|---|---|
| | Domestic | Foreign-controlled subsidiaries and branches | share of foreign controled subisidaries and branches | Domestic | Foreign-controlled subsidiaries and branches | share of foreign controled subisidaries and branches |
| 2010 | 3,727 | 1,051 | 28% | 34,638 | 8,289 | 24% |
| 2011 | 3,694 | 1,046 | 28% | 35,926 | 8,978 | 25% |
| 2012 | 3,609 | 1,032 | 29% | 35,471 | 8,136 | 23% |
| 2013 (30 june) | 3,593 | 1,018 | 28% | 34,426 | 7,499 | 22% |

Source: ECB/Consolidated Banking Data

In some EU Member States the banking sector is dominated by non-domestic banks, which in some cases have a share of more than 80% or 90% of total domestic banking assets (Luxembourg, Slovakia, Estonia) (see Figure 1).

Figure 1: Composition of banking sector assets in euro area countries by type of credit institutions in 2012




Source: ECB/Consolidated Banking Data

In addition, a foreign presence in the form of bank subsidiaries supervised by host authorities as opposed to foreign branches supervised by home authorities largely prevails in terms of euro area banking assets (see Table 1).

## Recent events shed light on the importance of intra-group asset transferability in crisis management

Intra-group transfers are very common in the normal course of business, but in times of distress access to internal intra-group liquidity flows may become even more important as they can be used for recovery purposes in order to provide the parent company (upstream support) or the branches or subsidiaries (downstream support) with vital funding.

As shown by De Haas and Van Lelyveld (2011), an efficient intra-group financial framework has positive effects on financial stability. Several case studies came to the conclusion that the existence of an efficient European intra-group banking network in Central, Eastern and Southeastern Europe was a crisis-mitigating factor because parent companies were able to carry on providing funding (Berglof et al., 2009).

## Problem identification

### Rationale behind the preferential treatment of cross-border intra-group flows

The LCR provides – as a baseline scenario – the same treatment for transactions among institutions, irrespective of whether the counterparties belong to the same group. Under this scenario, institutions whose liquidity is managed at a group or sub-group level would be required to alter their liquidity management or operational structure to comply with the LCR. Under this scenario, banking groups would lose the benefit of intra-group liquidity synergy effects and institutions could reduce their liquidity exposures to sub-group/parent companies within the same groups.

In addition, to facilitate the management of liquidity within banking groups and alleviate the implementation of the LCR framework for the institutions whose liquidity is centrally managed, EU regulation allows for preferential treatment of intra-group transactions, especially between two different Member States.

### Major concerns for the implementation of the preferential treatment

The implementation of the preferential treatment for inflows and outflows within the same banking group raises some concerns, as follows:

- it could disincentivise banks from managing their liquidity positions prudently in relation to counterparties that belong to the same group;
- it may be used by banks to circumvent their liquidity requirements at the level of the individual firm;
- it may add complexity to the LCR framework;
- it could make the analysis and comparison of the LCR across and within EU banking groups more challenging for market participants (reducing market transparency).

## Objectives

In line with the problems identified above, the present RTS aim to:

- define common objective criteria to allow for an effective implementation of the same preferential treatment within EU banking groups;

- ensure that the preferential treatment is not used by banks to circumvent the LCR requirements;
- ensure that the implementation of the preferential treatment will not overly damage the liquidity risk profile of both the provider and receiver entities.

### Policy options

In these draft RTS, the EBA suggests limiting the implementation of the preferential treatment to cases where the necessary safeguards are in place. In particular, the draft RTS propose the following restrictions:

- The liquidity provider/receiver should have a low liquidity risk profile.
- The intra-group liquidity transactions should be guaranteed by a sound contractual framework and legally binding commitments.
- The preferential treatment should not significantly alter the liquidity position of the provider.
- The liquidity provider should be able to closely monitor the liquidity position of the receiving entity (monitoring at least on a daily basis).

### Assessment of the policy options

The implementation of the proposed draft RTS is not expected to generate excessive cost:

- The information needed for the assessment of the objective conditions is already available and monitored by both supervisors and the institutions. As a result, no additional data collection will be required.
- The restrictions suggested in the draft RTS are deemed to be proportionate. They focus on minimum key areas to ensure that the objectives of the RTS are properly met without creating an unnecessary burden on EU institutions and NCAs (i.e. the cost of monitoring and evaluating compliance with the conditions).

The draft RTS are also expected to:

- reduce the potential impact of the implementation of the LCR on the cost of intra-group funding;
- ensure that intra-group transactions remain efficient and effective during stress periods;
- improve the management of intra-group liquidity risks during stress periods.

### Conclusion

The present qualitative assessment of the draft RTS concludes that the proposed regulation is not expected to generate an excessive negative impact on either NCAs or EU institutions.

## 4.2 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on a proposal of the draft RTS published on 18 November 2015.

The consultation period lasted for eight weeks and ended on 13 January 2016. Seven responses were received, of which five were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments and the EBA's analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

Some respondents criticised the differentiation of the criteria envisaged in the LCR Delegated Act to be considered in the application of the preferential treatment in the context of intra-group transactions when the counterparties are based in different Member States and when they are based in the same Member State. In their view requiring additional objective criteria in relation to EU cross-border transactions presents a distortion of the level playing field in the single market.

Under the legal context set out in the Level 1 text, some respondents, while appreciating the aims of the specification of the additional objective criteria for the application of the preferential treatment in the calculation of the LCR for cross-border intra-group liquidity flows, considered that there were a number of practical considerations to be flagged up. These considerations are discussed in detail in the table of responses below, but the key issues flagged up by most of the respondents can be summarised as follows.

While most of the respondents seemed to agree with the LCR calculated after the application of the preferential treatment as an objective criterion for the assessment of the liquidity risk profile of banks, they were of the view that the outcome of the SREP should not be considered for this assessment. Several respondents considered that the external legal review initially required in Article 3 of the draft RTS in the consultation paper on the agreements and commitments between the banks involved should be replaced by an internal legal review. Some respondents showed concern or asked for clarification on other specific questions such as the currency consistency of the lines, the maturity date of the lines or the contingency funding plans.

## Summary of responses to the consultation and the EBA's analysis

| Comments | Summary of responses received | EBA analysis | Amendments to the proposals |
|---|---|---|---|
| **General comments** | | | |
| Treatment of intra-group cross-border flows if one counterparty is a non-EU bank | One respondent requested some clarification on the treatment which should be followed in the case of intra-group transactions if one of the entities is located in a third country. | The preferential treatment envisaged for cross-border intra-group transactions in Articles 29(2) and 34(2) of the LCR Delegated Act is confined to cases where both counterparties are EU banks. Therefore, these draft RTS have the same scope of application, as they contain a further specification of the criteria therein established for the application of such preferential treatment.<br><br>Other transactions should follow the general treatment envisaged in the LCR Delegated Act. | No amendment. |
| Application of preferential treatment versus waivers | A comment was raised by one respondent about whether a rejection for the application of the waiver envisaged in Article 8 of the CRR was necessary as a precondition to benefit from the intra-group preferential treatment. | The application of the intra-group preferential treatment in the LCR Delegated Act (Articles 29 and 34) is not subject to a previous rejection for the waiver set out in Article 8 of the CRR. | No amendment. |
| Scope of application | The respondent required general clarification as to the scope of these RTS, and in particular which types of intra-group transactions they refer to. | The draft RTS develop the additional objective criteria referred to by Articles 29(2) and 34(2) of the LCR Delegated Act for the application of a preferential treatment in the context of cross-border intra-group credit and | No amendment. |

| Comments | Summary of responses received | EBA analysis | Amendments to the proposals |
|---|---|---|---|
| | | liquidity facilities. | |

## Responses to questions in Consultation Paper EBA/CP/2015/22

| Comments | Summary of responses received | EBA analysis | Amendments to the proposals |
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| **Question 1. Do respondents agree with the specifications of the criterion relating to the low liquidity risk profile? If not, what alternatives would you suggest to assess the liquidity risk profile of the liquidity receiver and provider?** | **LCR**<br><br>Respondents agreed with the use of LCR as an objective criterion to measure the liquidity risk profile of banks in the context of the application of the preferential treatment. However, some respondents asked whether or not the preferential treatment should be taken into account in the calculation of the LCR for these purposes. Respondents would agree with an LCR requirement after the application of the preferential treatment.<br><br>One respondent asked whether the application of the preferential treatment should be subject to compliance with the LCR necessarily based on the LCR reporting templates adapted to the LCR Delegated Act. | **LCR**<br><br>Article 2 of the draft RTS explains that for the purposes of this provision the liquidity coverage ratio shall be calculated under the assumption that the preferential treatment has already been applied. This means that the LCR should be calculated for the purpose of these RTS after the application of the preferential treatment.<br><br>Since 1 October 2015, the LCR Delegated Act has required that LCR requirements be met. The obligation of meeting the LCR does not depend on what templates banks are reporting.<br><br>The RTS require, amongst other things, compliance with the LCR under specific conditions in order to consider a low liquidity risk profile in banks for the purposes of the application of the preferential treatment. This obligation is not linked in the RTS to specific templates to be reported. | No amendment to the substance of the proposals has been made. However, some redrafting has been made for clarification. In Article 2(1) of the current draft it is stated that: ‘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.’ |
| | **SREP**<br><br>Some respondents disagreed with considering the outcome of the SREP conducted for the assessment of the | **SREP**<br><br>The liquidity risk profile of a bank is considered to be the result of a combined assessment of quantitative | No amendment. |

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| | liquidity risk profile in the context of the application of the preferential treatment. These respondents are of the view that the outcome of the SREP is not known by banks, which, in their view, could create confusion for the application of the preferential treatment. For this reason and because this criterion is subject to supervisory judgement they think it is not an objective criterion. In their view the criteria should only be quantitative.<br><br>In addition, some respondents expressed concern over whether the preferential treatment could be applicable if the SREP had not been conducted at the moment of the request for the application of the preferential treatment and therefore there would be no outcome for the full assessment of the liquidity risk profile as required. Some of them suggested using national scores, as used in the past. Some respondents argued that the SREP is being undertaken at consolidated or sub-consolidated levels and that the results might not be available on a single-entity basis. One respondent suggested using the SREP for both institutions, the receiver and the provider, together and not at an individual level for each of them. | and qualitative aspects of the liquidity risk.<br><br>The SREP is considered a key element in the assessment of the liquidity risk profile. It combines quantitative and qualitative elements for a holistic assessment. Because SREP decisions are institution-specific, they are seen as a relevant indicator of the liquidity risk profiles of the receiver and the provider. The objectivity of the SREP in the EU is ensured through the EBA *Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP)* published in December 2014. No confusion is expected with regard to the application of the preferential treatment, irrespective of whether the outcome of the SREP has not been revealed, as obviously banks are expected to be informed of the final decision by the NCAs involved.<br><br>The draft RTS require an assessment of a low liquidity risk profile according to the latest SREP conducted. Those credit institutions which might need to apply the preferential treatment in order to meet the LCR are expected to fall within the provisions envisaged in Article 99(2) of Directive 2013/36/EU, for which Article 97(4) of the directive foresees a review at least on an annual | |

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| | | basis. | |
| | **Others** | **Others** | |
| | More generally, some respondents suggested that the criteria should only be applicable to the provider. | The Delegated Act (Articles 29(2)(a) and 34(2)(a)) states that these criteria are applicable to both the provider and the receiver and the RTS need to specify these criteria for both of them. | No amendment. |
| | Some respondents suggested that the notification process envisaged in Article 2(a) and (c) should be limited to cases where it is required in accordance with Article 414 CRR. | Some clarification has been added to the drafting of the article in this regard. | The following drafting is envisaged in the current Article 2(3):<br>'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 Articles 29(1) and 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 Delegated Regulation (EU) 2015/61, 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.' |
| | Some respondents suggested that in order to avoid contagion and unintended effects the potential change to a preferential treatment, | Precisely in order to avoid unintended consequences, procyclical effects and contagion effects, the draft RTS envisage a mechanism of notification | |

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| | initiated following the assessment by the 'involved authorities', should be combined with a transitional period. | to competent authorities in case a bank (liquidity provider or receiver) stops meeting the LCR or other liquidity-related supervisory measures. In particular, a liquidity provider which stops meeting the LCR should outline the effect on the preferential treatment of the liquidity receiver. This will allow competent authorities to assess the corresponding restoration plan and decide on the possibility of still agreeing on the continuation of the application of the preferential treatment in a transitional manner, for example. | |
| **Question 2. Do respondents agree with the specifications of the criterion relating to binding agreements and commitments?** | **General comments on Article 3**<br>One respondent required clarification as to the difference between agreements and commitments mentioned in Article 3. | **General comments on Article 3**<br>The EBA observes that Articles 29(2)(b) and 34(2)(b) of the LCR Delegated Act refer to 'legally binding agreements and commitments'. However, the EBA does not consider that the formal denomination of the liquidity or credit facility would affect its eligibility for the preferential treatment as long as the conditions specified in Articles 29 and 34 of the LCR Delegated Act and in these RTS are met. | No amendment. |
| | One respondent asked that a model be provided for the contracts referred to in points (a) to (e) of Article 3. | The EBA considers that providing contract models goes beyond the mandate for these regulatory technical standards. | No amendment. |

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| | **Article 3(a)** | **Article 3(a)** | |
| | A majority of respondents considered that requiring external written and reasoned legal opinions for all liquidity commitments and agreements that would have to be renewed on a regular basis would be highly burdensome for large groups and would be cost-intensive.<br><br>In their view, in line with the proportionality principle, external legal opinions should be required only for the most significant liquidity lines within a group, while internal legal opinions would be sufficient for less significant liquidity lines.<br><br>Respondents also required clarification on whether a new external legal opinion should be provided every time each intra-group facility is reviewed.<br><br>One respondent also noted that previous regulatory regimes did not require legal opinions to be externally reviewed. | The EBA takes note of the burden respondents refer to regarding requiring external legal opinions.<br><br>The EBA suggests a new drafting where internal legal opinions would be valid.<br><br>In this context the EBA sees the need to require legal opinions, external or internal ones, to be approved by the management bodies of the credit institutions. Therefore, the management bodies of the credit institutions need to approve the legal opinions supporting the claims from applicant institutions that confirm the legal, binding and enforceable aspects of the credit or liquidity lines, due to the diversity of the applicable legal regimes.<br><br>It should also be noted that the legal review is required on a regular basis. In practice this means that the burden of a legal review should be expected to be confined to the first application and only for potential upcoming significant changes in the legal framework of the relevant transactions. | Some amendments have been introduced to Article 3, as indicated below. |
| | One respondent asked whether a new external opinion has to be provided every time an intra-group liquidity line | The intention of the EBA is to require a repetition of the legal review mentioned in Article 3 every time the agreement or commitment is | No amendment. |

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| | is reviewed. | materially amended or renewed. In this context, the initial legal opinion would have to be updated to reflect the current applicable legal and contractual provisions. | |
| | Several respondents highlighted that the requirement to have a liquidity or credit facility specifically dedicated to the application of the preferential treatment should be clarified. If this would only imply that a specific sentence is added to the contract stating that the facility is dedicated to the preferential treatment, the respondent sees the added value of this remark as questionable. In the respondent's view, this remark should be either further specified or removed. | The EBA considers that the credit or liquidity facility which benefits from the preferential treatment has to be specifically identified as it has a specific purpose which is to recognise the liquidity intra-group in the context of compliance with the LCR. | No amendment. |
| | One respondent required clarification as to whether the expression 'at any time' in Article 3(a) actually means within a period of 6 months, as the notice period for cancellation is at least 6 months. | The EBA clarified that the liquidity or credit facility shall be available at any time during its period of validity. | The current Article 3(1)(a) and Article 3(2) are drafted as follows:<br><br>'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 must be 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 |

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| | | | institutions must 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.'<br><br>'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.' |
| | One respondent referred to the Commission's report to the Parliament and the Council (in accordance with Article 8(1) CRR) on obstacles to the free movement of funds between institutions within a single liquidity sub-group and underlines that the Commission concluded that its 'review has not revealed relevant legal obstacles that would prevent institutions from entering into contracts that provide for the free movement of funds between them within a single liquidity sub-group'.<br><br>Against this background, the respondent argued that there should | The EBA notes that the report from the Commission to the European Parliament and the Council on 'Legal Obstacles to the Free Movement of Funds between Institutions within a Single Liquidity Sub-Group', published on 5 June 2014, concluded that:<br><br>'(i) the legislative process on CRR and CRD has been completed only very recently (and thus the co-legislators' approval of existing national discretionary powers is recent),<br><br>(ii) the Commission will explore whether the forthcoming liquidity coverage ratio delegated act can help to limit any undesirable practices that | No amendment. |

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| | be a general assumption of legal availability, and that the competent authorities would have to demonstrate the existence of such legal obstacles applying to applicants for an intra-group preferential treatment.<br><br>Consequently the requirement to have legal agreements for intra-group flows should be removed from the RTS. | trap liquidity within national borders. In this respect, it can seek to develop uniform, detailed and binding rules on liquidity, thereby promoting mutual supervisory confidence between competent authorities. More particularly, the delegated act could be an opportunity to establish additional objective criteria facilitating the allowance of a preferential treatment for cross-border intra-group inflows and outflows, thereby clarifying and improving the operation of cross-border intra-group flows,<br><br>(iii) there is a steady process improving the alignment of objectives of public stakeholders through greater European integration with a Single Rulebook, the EBA and especially through the Banking Union, and<br><br>(iv) this review has not revealed relevant legal obstacles that would prevent institutions from entering into contracts that provide for the free movement of funds between them within a single liquidity sub-group,<br><br>The Commission does not see a need currently to present a legislative proposal on this matter. However, the Commission will continue to closely monitor and review the situation and should this deteriorate, the Commission will reassess the need to | |

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| | | make such a legislative proposal.'<br><br>Against this background the EBA notes that the report concluded on the absence of existing relevant legal obstacles. Nevertheless, the EBA has no certainty that such a presumption of an absence of legal obstacles can be assumed on a permanent basis. | |
| | One respondent was unclear about what is meant by 'legal, binding and enforceable aspects […] are valid and enforceable' in Article 3(a). In the respondent's opinion it is a basic principle of contract law that a contract once concluded between the contracting parties would be binding in its entirety for all contracting parties. The respondent also questioned whether a 'valid' contract would require more than this, and what the difference between the legal and binding aspects of a contract is. Finally the respondent asked why a binding contract within the EU would not be enforceable. | In Article 3(a) of the consultative document, 'valid' contract refers to contracts that would meet all formal and legal requirements related to the validity of contractual provisions as required by the legal regimes of all relevant jurisdictions.<br><br>In this context, 'enforceable' refers to the legal possibility for one of the contracting parties to enforce the contract with regard to the other contracting party established in a different Member State. | No amendment. |
| | **Article 3(b)**<br><br>Several respondents questioned whether an explicit currency requirement is needed, as this is seen as overly restrictive and does not | **Article 3(b)**<br><br>Article 3(b) of the consultative document required that the currency of the line shall be consistent with the distribution by currency of the net | The current Article 3(1)(b) is drafted as follows:<br><br>'The currency denomination of the |

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| | reflect existing market practices where single-currency facilities are overly represented. | liquidity outflows of the liquidity receiver (these net liquidity outflows not including the inflows from the intra-group line). As such, there is no requirement for a perfect matching between the currencies in which these net outflows are denominated and the currencies of the intra-group liquidity or credit facility. Consistency would be assessed by the competent authorities in the context of a joint decision to authorise the application of the preferential treatment.<br><br>Moreover, this is consistent with the operational requirement specified in Article 8(6) of the LCR Delegated Act.<br><br>The EBA has introduced some amendments for clarification. | 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.’ |
| | **Article 3(c)** | **Article 3(c)** | |
| | One respondent suggested adding the words ‘unless the credit of liquidity line is unlimited’ after ‘the credit or liquidity line shall be clearly specified in the contract’ in Article 3(c). | The EBA agrees that agreements and commitments with unlimited amounts would be beneficial from the liquidity receiver’s perspective.<br><br>However, the EBA is also concerned that such an unlimited facility would be problematic for the following reasons:<br><br>-it might be difficult to demonstrate that this unlimited commitment is appropriately reflected in the contingency plan of the liquidity | No amendment. |

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| | | provider.<br><br>-it would not be possible to precisely determine the impact of the preferential treatment on the LCR of the liquidity receiver and the liquidity provider.<br><br>For these reasons, it is proposed that the preferential treatment would only apply to a pre-determined portion of the undrawn facility as defined by the competent authorities.<br><br>Therefore, it considers that the preferential treatment should only apply to a pre-defined maximum drawable amount. | |
| | **Article 3(d)** | **Article 3(d)** | |
| | One respondent suggested adding the words ‘other than legally permitted’ after ‘the agreements and commitments shall not contain any clause’ and also adding ‘out of the control of the borrower’ after ‘require any conditions’ in subparagraph (a) of Article 3(d). | The EBA considers that, although legally permitted under the applicable contractual legal regimes, such clauses should be seen as preventing a preferential treatment to be granted if they allow the liquidity provider to withdraw from its contractual obligations. | No amendment. |
| | One respondent considered that it would be unreasonable and overly intrusive to require that prior supervisory approval is sought every time the amount of the liquidity line is modified. In particular during times of | Consistent with the requirement that the credit or liquidity facility is specifically identified for the preferential treatment, changes to the available undrawn amount of the facility would have an impact on the | No amendment. |

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| | stress, this would prevent a timely reaction by the liquidity provider, by introducing undue delay in the implementation of the contingency liquidity plan. Therefore, the respondent suggests having a notification to the supervisor when the amount is modified, rather than a prior approval. | LCR of the liquidity provider and receiver. However, the EBA also considers that any change to the available undrawn amount of the facility that would lead to a situation where the LCR would not be met should be addressed in accordance with Article 414 CRR and Article 2 of these draft RTS.<br><br>Consequently, any change to the available undrawn amount as a result of the day-to-day management of intra-group liquidity should not be subject to prior supervisory approval by the competent authorities.<br><br>However, any change to the total available amount of the facility, which would require a change to the contractual provisions, shall remain subject to prior supervisory consent. | |
| | **Article 3(c) and (d)**<br><br>One respondent suggested deleting the parts relating to a prior supervisory consent in Article 3(c) and (d), as the institution should be able to take responsible decisions within the legal framework, and any breach of the LCR should be assessed in a subsequent analysis. | **Article 3(c) and (d)**<br><br>The EBA considers that allowing the provider to require conditions to be met by the borrower before it extends funds in accordance with the contract would create uncertainty as to whether a higher inflow or a lower outflow could be expected during times of stress. | No amendment. |

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| | **Article 3(e)**<br><br>One respondent questioned why a maturity should not be agreed if the provider and the receiver ensure that consideration of such a liquidity line in the liquidity risk framework of the provider and receiver is compliant with any maturity date agreed on. | **Article 3(e)**<br><br>The EBA agrees that credit or liquidity facilities with a pre-defined maturity could also benefit from a preferential treatment as long as the residual maturity is at least 6 months at any time, as facilities with a notice period of cancellation of at least 6 months are eligible. | The current Article 3(1)(e) is drafted as follows:<br><br>'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 must have a minimum notice period for cancellation of six months.' |
| | **Article 3(e)**<br><br>One respondent considered that the 6-month notice period in Article 3(e) is overly strict and should be reduced to 3 months. | **Article 3(e)**<br><br>The minimum 6-month notice period is meant to provide sufficient time for the liquidity provider to implement an alternative solution to ensure its compliance with the LCR, which may also include supervisory decisions. Therefore, a 6-month period is seen as appropriate while a 3-month period would not be sufficient in all cases in the EBA's view. | No amendment. |
| **Question 3: Do respondents agree with the specifications of the criterion relating to liquidity risk management of the liquidity provider?** | **General comments on Article 4**<br><br>One respondent supported the proposed specifications, while noting that the criteria relating to the liquidity | **General comments on Article 4**<br><br>The EBA takes note of the respondent's comment that the specifications are appropriate. | No amendment. |

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| | provider would require adjustments to systems. | | |
| | One respondent required clarification on whether Article 4 only applies to the liquidity provider, or to both the liquidity provider and the liquidity receiver. | While the requirements of Article 4 generally apply to the liquidity receiver, in accordance with Articles 29(2)(c) and 34(2)(c) of the LCR Delegated Act, the EBA considers that the contingency plans of the liquidity provider and the liquidity receiver should be consistent on the treatment of the credit or liquidity facility, as this would ensure that the liquidity risk profile of the liquidity receiver is correctly and consistently reflected in its contingency plan, and that both entities would treat the agreement or commitment in a consistent manner for their liquidity management, also in times of stress. | No amendment. |
| | **Article 4(a)**<br><br>One respondent suggested deleting 'at least' in Article 4(a), as the LCR can be reported, at a maximum, on a daily basis according to Article 414 CRR, and even though Article 4(a) requires monitoring and overseeing the liquidity position of the receiver and not reporting the LCR of the liquidity receiver, the frequency should not be higher than daily. | **Article 4(a)**<br><br>The EBA takes this opportunity to clarify that the intention of this requirement is to enable the liquidity provider to make all operational arrangements in a timely manner where it can be expected from the liquidity position of the liquidity receiver that the agreement or commitment will have to be executed.<br><br>The EBA agrees with comments that | Article 4(a) has been redrafted as follows:<br><br>'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 |

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| | | monitoring the liquidity position of the liquidity receiver more frequently than on a daily basis might be operationally complex and agrees with the deletion of 'at least' in Article 4(a). | receiver.' |
| | One respondent suggested deleting the requirement for daily monitoring and oversight of the liquidity position of the liquidity receiver on a permanent basis, as Article 414 only requires daily reporting of the LCR on a temporary basis in cases where institutions do not meet or expect not to meet the LCR. From this perspective, monitoring and oversight on a permanent basis are seen as burdensome conditions. | Articles 29(2)(c) and 34(2)(c) of the LCR Delegated Act require that the liquidity risk profile of the liquidity receiver shall be adequately taken into account in the liquidity risk management of the liquidity provider. To that extent, the EBA considers that in order to justify granting a preferential treatment when entities are established in different Member States, it is necessary that the liquidity provider monitors and oversees the liquidity position of the receiver on a daily basis, so that the provider is able to take the necessary operational arrangements in a timely manner to provide liquidity in accordance with the agreement or commitment and to take this into account in its liquidity risk management as early as possible.<br><br>Article 412 CRR and Article 4 of the LCR Delegated Act require banks holding liquid assets to cover the net liquidity outflows under stress over a period of 30 days. | No amendment. |
| | Instead of the current requirement of Article 4 to monitor and oversee the | The draft RTS do not specify in further detail how the liquidity provider shall | No amendment. |

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| | liquidity position of the receiver on a daily basis, one respondent suggested that it would be sufficient if the liquidity provider only monitored on a regular basis the liquidity position of the receiver. This could be achieved where appropriate via access to the monitoring systems of the liquidity receiver and the liquidity provider on an individual and consolidated basis. Alternatively, the liquidity provider and receiver could also demonstrate to the competent authorities how the appropriate information on the liquidity positions of the institutions involved is made available on a regular basis, for instance by sharing regular monitoring reports.<br><br>The respondent also suggested that competent authorities should evaluate the necessary frequency of these requirements based on the materiality or the liquidity business model of the entities. | monitor and oversee the liquidity position of the receiver on a daily basis, as the organisation and tools available might differ across institutions. However, the EBA considers that metrics such as supervisory reporting tools are appropriate, but not necessarily sufficient, to monitor and oversee the liquidity position of the receiver.<br><br>In order to ensure proper monitoring and oversight of the daily position of the liquidity receiver by the provider, the EBA considers that a daily frequency is appropriate. In cases where the liquidity position of the receiver is relatively stable due to its business model or business activities, this should be reflected in the choice of the tools used to monitor and oversee its liquidity position. | |
| | One respondent also suggested using regular access to liquidity reports (e.g. LCR reports, or reports on national liquidity requirements) and the contingency plans of the liquidity receiving entity in place of daily access to liquidity positions, as these are seen as better qualitative indicators of | The draft RTS do not specify in further detail how the liquidity provider shall monitor and oversee the liquidity position of the receiver on a daily basis, as the organisation and tools available might differ across institutions. However the EBA considers that metrics such as supervisory reporting tools are | No amendment. |

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| | liquidity risk management. | appropriate, but not necessarily sufficient, to monitor and oversee the liquidity position of the receiver. | |
| | **Article 4(b)** | **Article 4(b)** | |
| | With regard to Article 4(b), one respondent asked for examples of how the liquidity provider could demonstrate to the competent authority/ies that it could reasonably be expected to continue to provide the facility even in times of stress. | The EBA considers that this should be demonstrated on a case-by-case basis, as the situation and internal organisation of the liquidity risk management function of each liquidity provider might differ. However, in the EBA's view, evidence drawn from internal liquidity risk management decisions (including ALM committee decisions), from internal liquidity risk management reporting and information tools, from regulatory and supervisory reporting or from ILAAP documents could be provided by the liquidity provider to satisfy this condition. | No amendment. |
| | One respondent suggested clarifying what the level of the contingency plans is which is referred to in Article 4(b) if the liquidity provider and the liquidity receiver are covered by a single contingency plan. | The EBA considers that the conditions of Article 4(b) and (c) should apply regardless of whether the liquidity provider and the liquidity receiver are covered by different contingency plans or if they fall under the same contingency plan.<br><br>The EBA considers that the current wording does not require the liquidity provider and the liquidity receiver to have two different contingency plans, | No amendment. |

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| | | and therefore does not see a need for amendment. | |
| | **Article 4(b) and (c)** | **Article 4(b) and (c)** | |
| | Two respondents did not understand what Article 4(c) adds to Article 4(b) by requiring that the liquidity contingency plan of the liquidity provider takes into account the preferential treatment, if the preferential treatment is already fully considered in the contingency plans of both the liquidity provider and the liquidity receiver. | While Article 4(b) requires that the contingency plan of the liquidity provider does not rely on the liquidity to be provided to the receiver for other purposes, Article 4(c) ensures that the contingency plan of the liquidity provider foresees the provision of the necessary liquidity in accordance with the agreement and commitment to which a preferential treatment is granted. | No amendment. |