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Response to COM consultation on amending the LCR Delegated Regulation

The EBF welcomes the opportunity to share its comments on the European Commission Draft Delegated Act amending the Delegated Regulation (EU) N° 2015/61 of 10 October 2014 on the Liquidity Coverage Ratio (Communication reference 'Ares (2018)418078'). The EBF supports the Commission applying its power to review, as regards to article 462 of Regulation (EU) N°575/2013, the Delegated Regulation (EU) N°2015/61, in order to keep the legal text up to date in light of market changes.

We would like to use the opportunity to bring to the Commission's attention a matter linked to the treatment of Simple, Transparent and Standardised (STS) securitisations (see Regulation (EU) 2017/2402 creating a specific framework for simple, transparent and standardised securitisation). In our opinion, the Commission' s initiative to amend the Delegated Regulation on the Liquidity Coverage Ratio should be used to get a better liquidity treatment (Level 2A) for the STSs as long as such transactions meet the additional criteria laid down in Article 13.

We provide the following comments and recommendations on the Draft Delegated Act amending the Commission Delegated Regulation on the Liquidity Coverage Ratio ('LCR') currently being consulted on by the European Commission which require some clarification.

Article 1 of the amendment - Proposed amendment re waivers on minimum issue size for certain non-EU liquid assets (Article 2 LCR DA)

Although in principle we agree with the proposed amendment, it should be highlighted that the arguments with regard to non-EU subsidiaries also applies to a number of the EU countries, e.g. Eastern European countries. The waiver should therefore be extended to these countries as well.

Article 2 of the amendment - Date of application

The date of application of the Corrigendum is set in the document (see p. 25) as "18 months after the date of publication of the amending Regulation". In our view this will be too long for those instances where it will formally prevent making use of the corrections in the LCR DA that were urgently needed by supervisors and industry. We would urge the amended draft regulation to allow the supervisors and banks to already implement the changes once it is approved. Furthermore, the application date that shall happen 18 months after the date of publication of the amending Regulation is technically possible and

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
EU Transparency Register / ID number: 4722660838-23

www.ebf.eu

reasonable. However, we ask for the final corresponding EBA technical standard to be published only once the new delegated act is in force, and no later than six months after, in order to avoid overlaps that may lead to undue reporting burden.

Moreover, it should be considered that the current reporting of cross currency transactions is not straightforward.

Last but not least, in respect of securitisations, for securities issued before 1 January 2019, institutions could continue to apply the LCR provisions as defined in the LCR Delegated Act n°2015/61.

Article 2 - Scope and application
We do not support the introduction of Article 2, paragraph 4. For the sake of stability and clarity, competent authority should not be authorized to waive the Level 1 eligibility of withdrawable reserves from non-member states central banks denominated in their local currency (assuming all conditions are met).

Recommendation: We ask for the removal of paragraph 4.

Article 3 - Definition of retail deposits
Article 3 is amended as follows:

(a) point (8) is replaced by the following:

'8. 'retail deposits' means a liability to a natural person or to an SME, where the SME would qualify for the retail exposure class under the Standardised or IRB approaches for credit risk, or a liability to a company which is eligible for the treatment set out in Article 153(4) of Regulation (EU) No 575/2013, and where the aggregate deposits by that SME or company, aggregated on a group of connected clients basis, do not exceed EUR 1 million;';

Recommendation: We recommend that natural persons [and SMEs] are exempt from the requirement to make an economic interdependence assessment under Article 153, for the following reasons:

- Lack of available data. For large corporates, information is available publicly about control relationships and, perhaps an ongoing relationship banking model, to leverage in seeking to aggregate on a connected client basis.

- However, for retail/SME clients quite frequently there is no publicly available management information and the banking model is more likely to be transactional or product led rather than relationship based. As such institutions will be required to make assumptions in respect to broad connection relationships.

- The application of the connected client guidelines, particularly economic dependence, will enlarge some group of connected clients, adding additional counterparts and related exposures. That will result in a higher number of SME groups exceeding the threshold of €1 million, meaning that they will no longer qualify for the Retail exposure class.

- We do not believe that 'connected clients' concept, as being currently developed based on credit risk concepts, is relevant for liquidity risk management. This is particularly the case when considering that connected client counterparties whose financial health may be intrinsically linked owing to economic relationship, may not show the same behaviour regarding their investments (deposits or short-term investments withdrawals). Liquidity needs reliance on its own specific framework.

- We ask for the removal of the notion of 'connected clients' for the definition of retail deposits in the Corrigendum. 'retail deposits' definition in Part VI of CRR2 related to Liquidity has also been modified in the same vein in article 411(2). To ensure a consistency of definitions and concepts between regulations, we take this opportunity to ask for the removal of this notion in this article as well.

- Similar to retail exposures, SME related capital treatments exist to reflect the fact that SME portfolios are made up of a larger number of smaller exposures and so benefit from a degree of diversification. In the same way as retail exposures, SME obligors default for a very wide variety of reasons and there is no evidence to suggest that failure by reason of the financial difficulty of entities on which they may be economically dependent is so predominant as to warrant a specific treatment to. For liquidity purposes, we strongly urge that matters of risk concentration continue to be dealt with through Pillar 2 rather than being reflected in Pillar 1.

Alternative recommendation: We recommend that the deposits of clients are not aggregated at the group of connected clients level, for the purpose of Article 3.8, as there is no evidence to suggest that the difficulties met by one entity of a group of connected clients (especially when entities are economically interdependent) might change the liquidity behaviour of another entity. It is possible that multiple entities be linked together through a connected group of clients, while not having the same liquidity behaviour. If for instance a little SME is highly dependent in term of revenues, of one larger corporate, it does not mean this SME will have the same liquidity behaviour under a liquidity stress scenario, therefore it should not receive the same liquidity treatment

Article 3 - Definition of SME

Retail SMEs are already defined through point 8 of Article 3 of the Delegated Regulation n°2015/61.

For LCR calculation, the only useful information related to SME's notion concerns its assimilation to the retail category. Moreover, for the record, no definition of SME is used in Regulation n°575/2013, except for Article 501(2)(b) ("Capital requirements deduction for credit risk on exposures to SMEs").

Recommendation: *We also recommend that current point (6) of Article 3 be suppressed, notably to ensure consistency between Regulations.*
~~**"(6) SME' means a micro, small and medium-sized enterprise as defined in Commission Recommendation 2003/361/EC (1);"**~~

Article 4 – calculated outflows
Point 6 added paragraph:

Where an item can be counted in more than one outflow category, it shall be counted in the outflow category that produces the greatest contractual outflows for that item.

The paragraph is quite misleading - all items shall have defined its contractual outflows, or they have none (e.g. demand deposits).

Recommendation: We suppose the Regulation intended to mention "calculated" outflows instead of contractual. Nevertheless, in case our assumption is correct, we do not find such formulation in line with high standards demanded from texts in regulation. With such paragraph one can stipulate on borders of applicability of "can be counted" - almost all items could be counted in several categories dependent on information provided. To maximise LCR one is then motivated to gather as much information as available to move an item to the appropriate outflow category. The mentioned paragraph is in counteraction of such endeavour.

Article 4 - Reporting currency
Article 4 is amended as follows:

(a) paragraph 5 is replaced by the following:

'5. Credit institutions shall calculate and monitor their liquidity coverage ratio in the reporting currency for all items irrespective of their actual currency denomination. In addition, credit institutions shall separately calculate and monitor their liquidity coverage ratio as follows:

(a) for items that are subject to separate reporting in a currency other than the reporting currency in accordance with one of the provisions of Article 415(2) of Regulation (EU) No 575/2013, in that other currency;

(b) for items denominated in the reporting currency where the aggregate amount of liabilities denominated in currencies other than the reporting currency equals or exceeds 5% of the credit institution's total liabilities, excluding regulatory capital and off-balance sheet items, in the reporting currency.

Credit institutions shall report to their competent authority the liquidity coverage ratio in accordance with Commission Implementing Regulation (EU) No 680/2014.';

Paragraph 5 (b) is unclear "Items denominated in the reporting currency where the aggregate amount of liabilities denominated in currencies other than the reporting currency …

Recommendation: We recommend that paragraph (5) (b) of article 4 is removed. The suggested provision is unclear, and it could lead to an additional reporting requirement which would be in contrast with the principal of proportionality. Furthermore, the requirement for reporting LCR in significant currency is already captured in art. 4(5)(a).

Amendments to 415 are currently part of the dialogue discussions. Including this text in the revision of the LCR DA at this stage may lead to unintended differences and misinterpretations.

Article 4 – Off-balance sheet items
In Article 4, paragraph 5, point (b) of the draft Delegated Regulation, what are "off-balance sheet items" in the context of this Article?

"liabilities denominated in currencies other than the reporting currency equals or exceeds 5% of the credit institution's total liabilities, excluding regulatory capital <u>and off-balance sheet items</u>, in the reporting currency".

Article 7 (b)– General requirements for liquid assets
A reference should be included also referring to article 35.

As regards to Article 7, paragraph 7, point (aa), we ask for the following amendment:

*"(aa) the exposures to central governments referred to in point**s (c) and** (d) of Article 10(1);"*

Article 10 – L1 Assets- Level 1 assets

To be consistent with our requirement on Article 2, paragraph 4, we ask for a revision of Article 10, paragraph 1, point d, (iii). For the sake of stability and clarity, competent authority should not be authorized to waive the Level 1 eligibility of withdrawable reserves from non-member states central banks denominated in their local currency (assuming all conditions are met).

Recommendation: Point (d) (iii) should be amended to suppress the reference to article 2.4, or article 2.4 should be reworded, because it currently refers to article 2.3.aa. 2.3.aa is clearly related to the issue size condition exemption, therefore it should not be mentioned in article 10.1. We ask for the revision of the amendment as follows:

"Point (d) of paragraph 1, should also include assets on regional governments or local is replaced by the following:

(d) the following assets:

[…]

(iii) reserves held by the credit institution in a central bank referred to in point (i) provided that the credit institution is permitted to withdraw such reserves at any time during stress periods, that the conditions for such withdrawal have been specified in an agreement between the supervisory authorities provided they are treated as exposures to the central government of a of that third country and the central bank in which the reserves are held;"

Article 10 –Assets on Regional governments or local authorities treated as exposures to central governments of a third country

10.1.d (iv) assets representing claims on or guaranteed by regional governments or local authorities provided they are treated as exposures to the central government of a third country of the type referred to in type (i)

Recommendation: We support the inclusion of the following paragraph:

"10.1.d (iv) assets representing claims on or guaranteed by regional governments or local authorities provided they are treated as exposures to the central government of a third country of the type referred to in type (i)"

Article 11 - Level 2A assets (1/2)

The current wording of point (iii) of Article 11(1)(e) of the Delegated Regulation is still not clear. Indeed, "*time to maturity"* suggests that the residual maturity of the security should be less than 10 years, whereas "*at the time of issuance"* refers to the initial maturity.

Recommendation: We believe that this point should be clarified, and we propose to delete the reference to the initial maturity trough the following amendment:
"*1. Level 2A assets shall only include assets falling under one or more of the following categories and meeting in each case the eligibility criteria laid down herein:…….*
(e) corporate debt securities which meet all of the following requirements:
…….
(iii) "the residual maturity of the securities is no more than 10 years, whereas potential optionalities are not taken into consideration

Article 11 - Level 2A assets (2/2)

So far, securitisations meeting the criteria presented in Article 13 are eligible as Level 2B assets only. This rule would also cover STS designated securitisations of the highest possible external rating, unlike covered bonds with a minimum credit quality of 2 and meeting all remaining criteria of Article 11 (1) (c) Delegated Regulation (EU) 2015/61 being eligible as Level 2A Assets. Even covered bonds stemming from third countries meeting the criteria in Article 11 (1) (d) would be more privileged compared to STS-securitisations of the highest possible external rating.

Recommendation: STS designated securitisations of the highest possible credit quality step and a minimum issuance volume of 250 million EURO should be made eligible as Level 2A Assets pursuant to Article 11 (1) as long as such transactions meet the additional criteria laid down in Article 13.

Article 13 - Level 2B securitisations

Regarding securitisation, the proposed Delegated Regulation amending the LCR Delegated Act n°2015/61 incorporates the requirements for STS securitisations under the newly enacted securitisation regulation, which creates a framework defining Simple, Transparent and Standardised securitisations (STS). In such new STS regulation, regulators have indicated that work had been done to establish criteria for STS securitisation. However, such regulation does not mention the need for an actual STS label to get eligibility under the LCR ratio.

In the proposed amendment regarding securitisation, LCR criteria which are similar to STS criteria are withdrawn, and instead securitisations have to be STS so that they can qualify as LCR level 2B assets. On the one hand, this direct incorporation by reference is a positive, as it favours consistency across regulations (Solvency 2, LCR etc.). On the other hand, as a result of incorporation by reference, new criteria have been added that were not part of the LCR list of criteria until now while not providing any additional benefit for securitisations complying with such more demanding LCR requirements. Furthermore, as the suggested list of criteria for LCR is broader, a number of transactions currently eligible to the LCR will not be able to qualify under the new regulation. This might have a negative effect on the market (secondary prices might be impacted – at least for the foreseeable future).

Recommendation: We suggest a more balanced approach, which would consist in:

- Including securitisations complying with STS requirements into level 2A assets;
- Maintaining the current parameters for level 2B securitisations (with some alignment with the STS criteria);
- Including a new asset class within securitisations, namely ABCP issued by programmes fully supported complying with European Money Market Funds requirements.

Several elements make inclusion of ABCP programme issuances within eligible assets for LCR very logical:

1) It is in line with the draft Commission Delegated Regulation that states pages 4 & 5 that "*the Commission will […] keep the [LCR regulation] up to date in light of market changes and will consider additional assets that may have become sufficiently liquid to merit inclusion in the liquidity buffer of a credit institution […].*"
2) It is also consistent and build a holistic regulatory approach with the Money Market Fund Regulation (Regulation (EU) 2017/1131) which imposes to Money Market Fund to invest only in liquid assets, and includes ABCP programmes issuances within the set of liquid assets. It is well known now by market participants that fully supported ABCP programmes issuances are very close to short term covered bond. Like in covered bonds, investors of ABCP programmes have a dual recourse, and are secured firstly by liquidity lines from sponsoring banks which cover liquidity, credit and operational risks, and secondly by collaterals refinanced by ABCP programmes. These collaterals are

securitisation positions funding real economy (predominantly, trade receivables, assets from automotive sector, consumer leases).

3) It is also in accordance with targets laid down in recital (10) of Commission LCR Delegated Regulation (EU) n°2015/61 of 10 October 2014 stating that "*a broader range of eligible sub categories of assets would increase diversification within the liquidity buffer and facilitate the financing of the real economy*". Indeed, inclusion of ABCP programmes within eligible subcategories of assets would increase diversification within the liquidity buffer and facilitate the financing of real economy, and would contribute to economic growth as it would send a positive signal to investors in relation to these assets.

All these elements are in line with Capital Markets Union goals promoted by European Commission to facilitate the financing of real economy1.

Finally, we consider that securitisations currently complying with LCR requirements should benefit from a grandfathering period, and continue to be LCR eligible without complying with new requirements during a transitory phase.

We propose the following amendment to Article 7, paragraph 3 of the draft LCR Delegated Regulation:

"*3. The assets shall not have been issued by the credit institution itself, its parent undertaking, other than a public sector entity that is not a credit institution, its subsidiary or another subsidiary of its parent undertaking or by a securitisation special purpose entity with which the credit institution has close links.* ***For the purpose of this paragraph, ABCP programmes are not considered as securitisation special purpose entity with which the credit institution has close links or as a credit institution or subsidiary of credit institution***;"

ask for the deletion of Article 13, paragraph 1 of the draft Delegated Regulation:

~~***"1. Exposures in the form of asset-backed securities referred to in Article 12(1)(a) shall qualify as level 2B securitisations where they satisfy the following conditions:***~~
~~***(a) they are permitted to use and are using the designation 'STS', or a designation that refers directly or indirectly to 'STS', in accordance with Regulation (EU) 2017/42 of the European Parliament and of the Council*;***~~
~~***(b) they meet the criteria laid down in paragraphs 2 to 13 of this Article."***~~

Instead of its deletion, we propose the following amendment to Article 13, paragraph 2, points (c), (d), (e), (f), (h), (i) and (j) of the LCR Delegated Regulation n°2015/61:

"(c) The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.

[1] See also Moody's sector in depth report 'securitisation is a relevant source of funding for the European economy dated September 25, 2017 mentioning page 2: *'In 2016, the last partially supported European ABCP conduit was converted to full support, meaning that European ABCP investors benefit from a Covered Bond like dual recourse. They are primarily exposed to the credit quality of the conduits' key counterparties (i.e. liquidity provider), with an additional claim over the securitised assets.*

(d) For the purpose of paragraph (c), any of the following shall constitute severe clawback provisions:

(i) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;

(ii) provisions where the SSPE can only prevent the invalidation referred to in point (i) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

For the purpose of paragraph (c), clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs (c) and (d).

(e) The transaction documentation shall clearly specify the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases.

(f) The transaction documentation shall clearly specify provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank in the case of their default, insolvency, and other specified events, where applicable.

[...]

(h) The exposures underlying the securitisation position shall not include any securitisation position.

(i) The underlying exposures shall not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.

(j) The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

(i) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt- restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

- a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and

- the information provided by the originator, sponsor and SSPE in accordance with points transparency requirements of Regulation (EU) No

2017/2402 explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;
(ii) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or
(iii) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.”

In Article 13, paragraph 2, we support the deletion of point (k).

In Article 13, paragraph 2, point (g) of the draft Delegated Regulation, we ask for the introduction of the following amendment:

“(g) the securitisation position is backed by a pool of underlying exposures and those underlying exposures either all belong to only one of the following subcategories or else they consist of a combination of residential loans referred to in point (i) and residential loans referred to in point
[…]
(vi) an ABCP issued by an ABCP programme which: (i) is fully supported by a regulated credit institution that covers all liquidity, credit and material dilution risks, as well as ongoing transaction costs and ongoing programme-wide costs related to the ABCP, if necessary to guarantee the investor the full payment of any amount under the ABCP; (ii) is not a re-securitisation and the exposures underlying the securitisation at the level of each ABCP transaction do not include any securitisation position; (iii) does not include a synthetic securitisation as defined in point (11) of Article 242 of Regulation (EU) No 575/2013. Requirements set out in paragraph 2, points (c) to (f) and (h) to (j) and in paragraph (3) to (6) apply securitisation positions underlying the ABCP programme;”

If we support the deletion of paragraphs 7 to 9 of Article 13 of the Delegated Regulation n°2015/61, we ask for the following amendments to paragraphs 3 to 6:

“(3) The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.
The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

(4)
(a) Where an enforcement or an acceleration notice has been delivered:
(i) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that an amount

be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;

(ii) principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position;

(iii) repayment of the securitisation positions shall not be reversed with regard to their seniority; and

(iv) no provisions shall require automatic liquidation of the underlying exposures at market value.

(b) Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold.

(c) The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the securitisation is a revolving securitisation, including at least the following:

(i) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold;

(ii) the occurrence of an insolvency-related event with regard to the originator or the servicer;

(iii) the value of the underlying exposures held by the SSPE falls below a predetermined threshold (early amortisation event); and

(iv) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality (trigger for termination of the revolving period).

(5) The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

(6) In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender."

In Article 13 of the draft Delegated Regulation, we ask for the introduction of the following paragraph 13b:

"13b. Exposures in the form of asset-backed securities referred to in Article 12(1)(a) shall qualify as level 2A securitisations where they satisfy the following conditions:

(a) they are permitted to use and are using the designation 'STS', or a designation that refers directly or indirectly to 'STS', in accordance with Regulation (EU) 2017/42 of the European Parliament and of the Council*;

(b) they meet the criteria laid down in paragraphs 2 to 13 of this Article."

In Article 13, paragraph 14 we ask for the following amendment:

"(14) The market value of level 2B securitisations shall be subject to the following minimum haircuts:
(a) 25 % for securitisations backed by the subcategories of assets referred to in points (g)(i), (ii), ***~~and~~*** *(iv)* ***and (vi)*** *of paragraph 2;*
(b) 35 % for securitisations backed by the subcategories of assets referred to in points (g)(iii) and (v) of paragraph 2."

Moreover, we support the introduction of a paragraph 14a in Article 13:

"(14a) The market value of level 2A securitisations shall be subject a 15% minimum haircut."

Article 15 – CIUs and Equity risk
Article 15, Paragraph 1 of the Delegated Regulation n°2015/61 states that:

"1. Shares or units in CIUs shall qualify as liquid assets of the same level as the liquid assets underlying the relevant undertaking up to an absolute amount of EUR 500 million (or equivalent amount in domestic currency) for each credit institution on an individual basis, provided that:
(a) the requirements in Article 132(3) of Regulation (EU) No 575/2013 are complied with;
(b) the CIU invests only in liquid assets and derivatives, in the latter case only to the extent necessary to mitigate interest rate, currency or credit risk in the portfolio."

This means that all the assets qualifying as liquid assets when held directly, also qualify as liquid assets when held indirectly through a CIU (only with a higher haircut). This is confirmed by Article 15, Paragraph 2, point (h) including as "*underlying liquid assets*" "*shares referred to in Article 12(1)(c)*" and providing the minimum haircut for those assets (i.e. 55%).

However, Article 15, Paragraph 1 of the Delegated Regulation, which is inspired by Article 416 Paragraph 6 of the Regulation (EU) N°575/2013, restricts the derivatives a CIU qualifying as liquid asset can invest in to those "*necessary to mitigate interest rate, currency or credit risk in the portfolio*"; this list does not include equity risk, although a CIU investing in shares (exposing itself to equity risk) may qualify as liquid assets.

Recommendation: It should be clarified that shares, or units in a CIU, investing in shares referred to in Article 12(1)(c) of the Delegated Regulation and in derivatives to the extent necessary to mitigate equity risk in the portfolio qualify as liquid assets. We therefore propose the following amendment:

"*1. Shares or units in CIUs shall qualify as liquid assets of the same level as the liquid assets underlying the relevant undertaking up to an absolute amount of EUR 500 million (or equivalent amount in domestic currency) for each credit institution on an individual basis, provided that:*
(a) the requirements in Article 132(3) of Regulation (EU) No 575/2013 are complied with;
(b) the CIU invests only in liquid assets and derivatives, in the latter case only to the extent necessary to mitigate interest rate, currency, ***equity*** *or credit risk in the portfolio."*

Art. 15(.4) Role of "the external auditors in CIU calculations
Article 15(4) of the LCR delegated act states:

"Where the exposure is not sufficiently material for a credit institution to develop its own

methodologies and provided that, in each case, the competent authority is satisfied that this condition has been met, a credit institution may only rely on the following third parties to calculate and report the haircuts for shares or units in CIUs: (a) the depository institution of the CIU, provided that the CIU invests exclusively in securities and deposits all such securities at this depository institution; or 17.1.2015 L 11/19 Official Journal of the European Union EN (b) for other CIUs, the CIU management company, provided that the CIU management company meets the requirements laid down in Article 132(3)(a) of Regulation (EU) No 575/2013. "

The corrigendum adds a new subparagraph, stating:

> *"The correctness of the calculations by the depository institution or the CIU management company shall be confirmed by an external auditor".*

It is not clear if the 'calculations' mentioned in this new subparagraph concern the value of the funds or the correctness of entities' LCR calculations. This aspect should be clarified. Indeed, for the latter, an external audit would unduly introduce a supplementary burden in terms of costs and time of processing for the LCR, which is by definition a short-term ratio.

Recommandation: it should be clarified that what is required is that external auditors confirm the Net Asset Value of the CIU.
For the sake of clarity, we propose the following amendment to Article 15(4):

"The correctness of the ***~~calculations~~*** ***market value of shares*** *by the depository institution or the CIU management company shall be confirmed by an external auditor."*

Article 17 - Waiver for unwind mechanism for secured transactions
Regarding the waiver to the unwind mechanism introduced for secured transactions with the ECB or the central bank of a Member State we find that the reference to HQLA assets should be removed. To not hinder the effective transmission of monetary policy to the economy it is important not to limit this waiver in advance.

Recommendation: The amendment itself to article 17 is fine but the reference to HQLA in the justifying text should be removed.

Article 21 - Netting of derivatives transactions
Point (12) of the document regarding Article 21 Netting of derivatives transactions:

With such description of netting for cross-currency derivatives, it is not clear how to proceed when calculating single currency LCR. As the Regulation itself directly requires a single currency calculation, Article 21 might be rewritten to support such calculations.

Recommendation: We suggest to modify Article 21 the drafting as follows to clarify:

Credit institutions shall calculate liquidity outflows and inflows expected over a 30 calendar day period for the contracts listed in Annex II to Regulation (EU) No 575/2013 and for credit derivatives on a net basis by counterparty subject to the existence of bilateral netting agreements in accordance with Article 295 of that Regulation. For the purposes of this Article, net basis shall be considered to be net of collateral to be posted or received, provided that, in the case of collateral to be received, the collateral qualifies as a liquid asset under Title II of this Regulation and the credit institution would be legally entitled and operationally able to reuse it. Cash outflows and inflows arising from foreign currency derivative transactions that involve a full exchange of principal amounts on a simultaneous basis (or within the same day) shall be calculated on a net basis, even where those *transactions are not covered by a bilateral netting agreement.* ***For the purposes of single currency calculation such netting across different currencies is not applicable. However, cash flows denominated in the same currency and having the same payment dates should be netted.***

Article 22 - Unspecified outflow rates
In the consultation document, under point (13) the proposed change was to add following paragraph to Article 22 - Definition of liquidity outflows:

'3. The calculation of liquidity outflows is subject to Article 26.';

However, it makes no sense as Article 26 deals only with "Outflows with inter-dependent inflows". To calculate all outflows based on Article 26 is impossible.

Therefore, we assumed that proper formulation of added paragraph should be:

'3. The calculation of liquidity outflows ***with interdependent inflows*** *is subject to Article 26.';*

Article 23 – Unspecified outflow rates
(14) in Article 23, paragraph 1 is replaced by the following:

1. Credit institutions shall regularly assess the likelihood and potential volume of liquidity outflows during 30 calendar days for products or services which are not referred to in Articles 27 to 31A and which they offer or sponsor or which potential purchasers would consider associated with them.

Recommendation: Basically, Article 23 refers to items for which outflows weights have not been specified. In addition to Articles 27 to 31A, the Articles 24 - 26 should also be excluded from regular assessment.

Indeed, in our view, outflows on items quoted in article 23, other than Trade Finance, are already taken into account through article 31 (notably with the introduction of art.31.A.2 by the corrigendum)

- Outflows on undrawn loans and advances to wholesale counterparties (art.23(b)), and on mortgage loans that have been agreed but not yet drawn down; (23(c)).
- Credit cards (art.23(d)) and overdrafts (art.23(e))
- Planned derivatives payables (art 23(g))

Regarding uncommitted funding facilities (art.23(a)), we believe that no outflow should be taken for the LCR calculation. Indeed, they represent revocable commitment that the institution can (by definition) terminate at any time. This is confirmed by the fact that those elements are neither recorded in accountancy, nor taken into account for the calculation of Risk weighted assets in Solvency.

Article 26 - Wholesale funding (in connection with article 22)
The Corrigendum now facilitates the application of article 26 also for wholesale funds. However, the EBA has added an additional requirement for the netting of cashpooling products, i.e. specific approval by the competent authority (ECB). Adding additional requirements next to what is already binding via the regulations is confusing and makes the application of such much less transparent.

Article 28 - Outflow rates for secured lending transactions with central banks
The revision of Article 28, paragraph 3 defines a 0% outflow to secured lending transactions when the counterparty is the credit institution's domestic central bank (i.e. the ECB or the central bank of the third country in which the credit institution is incorporated). This proposal is much more stringent than the one defined in the Delegated Regulation (EU) n°2015/61. We ask for a more flexible approach, the outflow rate shall be 0% for transactions realised with all central banks, whatever they are domestic or not.

Recommendation: We therefore propose the following amendment:

"3. Credit institutions shall multiply liabilities maturing within 30 calendar days and resulting from secured lending or capital market-driven transactions, as defined in points (2) and (3) respectively of Article 192 of Regulation (EU) No 575/2013, by:

(a) 0% if they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 10 of this Regulation as liquid assets of any of the categories of level 1 asset referred to in Article 10, with the exception of extremely high quality covered bonds referred to in point (f) of Article 10(1);

(aa) 0% if the lender is a central bank;

[…]

~~***Where the counterparty to the secured lending or capital market-driven transaction is the credit institution's domestic central bank, the outflow rate shall be 0%. For the purposes of this paragraph, the credit institution's 'domestic central bank' is the ECB where the national central bank of the credit institution's home Member State is a member of the ESCB, or the national central bank of the credit institution's home Member State where that central bank is not a member of the ESCB, or, as the case may be, the central bank of the third country in which the credit institution is incorporated.***~~*"*

At least, for subsidiaries and branches incorporated in a third countries, and in order to eliminate any prudential liquidity obstacle in foreign currencies, we urge the Commission to define a soften treatment for secured lending and capital market transactions with central banks benefiting, at least, from CQS1 credit quality steps.

Article 28 - Outflow rates for liquid assets
Article 30(5) states that:

> *"If the credit institution holds a short position* **(1)** *that is covered by an unsecured security borrowing, the credit institution shall add an additional outflow corresponding to 100% of the market value of the securities or other assets sold short unless the terms upon which the credit institution has borrowed them require their return only after 30 calendar days* **(2)***"*

(1) Unlike in the LCR delegated act, where it was clearly stated that short positions concerned by this paragraph was to be delivered within 30 days, the delivery date of these operations is not specified in the corrigendum, leading us to believe that this article applies to all the short positions covered by unsecured securities borrowing, whatever their delivery dates are.

(2) Article 28(7) states that unsecured securities borrowings maturing within 30 days shall give rise to an outflow of 100%.

The application of these two articles could lead to a double-counting of outflows when a short position is covered by unsecured securities borrowing maturing within 30 days, whereas it is not the case in the Basel Framework, where no double counting is possible: BCBS 328.147: "In the case of a bank's short positions, if the short position is being covered by an unsecured security borrowing, the bank should assume the unsecured security borrowing of collateral from financial market participants would run-off in full, leading to a 100% outflow of either cash or HQLA to secure the borrowing, or cash to close out the short position by buying back the security».

Furthermore, the outflow weight of 100% leads to incorrectly excessive weighted outflows, if the borrowed asset has been reused for a repo. If a L2B security, e.g. with a market value or 100 EURO has been borrowed on an unsecured basis and has been reused for a repo maturing within 30 days, the repo will already show 50% outflow weight, i.e. 50 EURO outflow. The additional outflow weight of 100% for the borrowed asset, i.e. 100 EURO cause total LCR outflows of 150 Euro.

Recommendation: The outflow weight of the liquid asset should reflect the market value of the liquid asset after deduction of the haircut. The outflow weight for non HQLA is 0%.

Article 30 - Short positions for securities lending
Article 30 (a) is amended as follows:

(a) paragraphs 2, 3, 4 and 5 are replaced by the following:

…

5. If the credit institution has a short position that is covered by an unsecured security borrowing, the credit institution shall add an additional outflow corresponding to 100% of the market value of the securities or other assets sold short unless the terms upon which the credit institution has borrowed them require their return only after 30 calendar days.

This paragraph causes a double burden for short positions, which are covered by an unsecured security borrowing. According to Article 28 above, 100% outflow have been applied to the borrowed asset, additionally Article 30 (a) paragraph 5 specifies 100% outflow for the short position. However, the only liquidity burden due to these transactions is 100% on the short position.

Recommendation: Article 31 (5) should take the outflows of Article 28 (7) into account and should be changed to: "If the credit institution has a short position that is covered by an unsecured security borrowing, the credit institution shall add an additional outflow as defined for secured lending and capital market-driven transactions as defined in Article 28."

In total the proposed changes for Article 28 and 30 will avoid any double burden for short positions which are covered by unsecured borrowings. Article 28 will show outflows in the amount of the liquidity value after haircut, Article 30 shows the haircut as outflow. Total LCR outflows add up to 100% of the short position.

For clarity, it should be precised that if an outflow has already been taken, through article 28.7, on the maturing assets borrowed on an unsecured basis, it should not be double counted through article 30.5.

Recommendation: We therefore propose the following amendment:

"Where the competent authority considers that outflow material in relation to the potential liquidity outflows of the credit institution, it shall require the credit institution to add an additional outflow for those contracts corresponding to 100% of the market value of the securities or other assets sold short unless the terms upon which the credit institution has borrowed them require their return only after 30 calendar days. ***If such outflow has already been reported through article 28.7, it should not be double reported through article 30.5****"*

Article 30 - Short positions for securities lending

The amendment proposed to Article 30, paragraph 2, as regards to a downgrade in the external credit assessment of the credit institution, is not clear enough. We ask for an alignment with the wording of the Delegated Regulation (EU) n°2015/61.

Article 31 - Committed liquidity facilities for SSPEs

*'6. The undrawn committed amount of a liquidity facility that has been provided to an SSPE for the purpose of enabling such an SSPE to purchase assets**,** other than securities* ***[~~,~~]*** *from clients that are not financial customers shall be multiplied by 10% to the extent that it exceeds the amount of assets currently purchased from clients and where the maximum amount that can be drawn down is contractually limited to the amount of assets currently purchased.';*

This amendment is not identified as a substantive amendment in the Commission Explanatory Memorandum, but the Commission states that it has taken the opportunity to correct errors in the text. However, the insertion of the comma is not merely the correction of an error. It amounts to a significant and substantive change that could have serious impacts on banks which facilitate securitisation by providing liquidity facilities to SSPEs.

Under the current text, banks can fall within paragraph 6 if they provide liquidity facilities to SSPEs that buy assets from financial customers (such as other banks, financial leasing companies, etc.) as long as the assets are not securities. The insertion of the comma after the word "securities" would preclude banks from utilizing the treatment in paragraph 6 if they buy an asset such as a loan or other receivable from a financial customer. This would be a significant change which has not been set out in the Explanatory Memorandum and presumably not addressed in the impact assessment.

Recommendation: We recommend deleting the highlighted comma as above.

Article 31A - Outflows from liabilities and commitments not covered by other provisions of this Chapter

For a clearer assessment, we ask the European Commission to delete in Article 31A, paragraph 2, the specific list of non-financial customers "for the purpose" of such disposition (no segregation to be made between wholesale and retail customers).

Recommendation: We suggest to revise the wording as follows:

"2. If the total of all contractual commitments to extend funding to non-financial customers within the next 30 days, other than commitments referred to in Articles 24 to 31, exceeds the amount of inflows from those non-financial customers calculated in accordance with point (a) of Article 32(3), the excess shall be subject to a 100% outflow rate. ***~~For the purposes of this paragraph, non-financial customers shall include, but not be limited to, natural persons, SMEs, corporates, sovereigns, multilateral development banks and public sector entities.~~"***

Article 32 - a. List of non-financial customers

To be consistent with our amendment proposal to Article 31A, paragraph 2 and in order to waive the possible following ambiguities, we suggest to revise the wording of article 32, paragraph 3, point (a) as follows:

Recommendation: We suggest to revise the wording as follows:

"3. By way of derogation from paragraph 2, the inflows set out in this paragraph shall be subject to the following requirements:

(a) monies due from non-financial customers with a residual maturity of no more than 30 days, with the exception of monies due from them from trade finance transactions or maturing securities, shall be reduced for the purposes of principal payment by 50% of their value. ~~***For the purposes of this point, non-financial customers has the same meaning as in Article 31A(2)***~~*. By way of derogation, credit institutions acting as intermediaries as referred to in the second subparagraph of Article 31(9) that have received a loan ('pass-through loan') from credit institutions set up and sponsored by the central or regional government of at least one Member State in order for them to disburse a promotional loan to a final recipient, or have received a similar pass-through loan from a multilateral development bank or a public sector entity, may take an inflow into account up to the amount of the outflow that they apply to the corresponding pass-through loan;"*

Article 32 – Inflows for credit institutions acting as intermediaries for their promotional loans

The provision allowing for pass through loans to be taken symmetrically, is already introduced through article 32(3)(a), second paragraph

Recommendation: we suggest that the EBA maintain a publicly available database of promotional banks within the Union as determined by the competent authorities

Annex I – LCR Calculation tool

We note the following by way of feedback on the Draft Delegated Act amending the Commission Delegated Regulation on the Liquidity Coverage Ratio ('LCR').

We welcome the clarification provided in Annex I in respect of the amendment of paragraph 3 and the deletion of paragraph 5.

We would also like to see the liquidity buffer calculation tool amended to reflect the changes in the amending regulation. In this respect, we note the following proposed amendment per Article 1(24) of the Draft Delegated Act:

(a) Paragraph 3 is replaced by the following:

'3. 'Excess liquid assets' amount: this amount shall be comprised of the components defined herein:

(a) *the adjusted non-covered bond level 1 asset amount, which shall be equal to the value post-haircuts of all level 1 liquid assets, excluding level 1 covered bonds, that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction;*

(b) *the adjusted level 1 covered bond amount, which shall be equal to the value post-haircuts of all level 1 covered bonds that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit* *institution and the counterparty exchange liquid assets on at least one leg of the transaction;*

(c) *the adjusted level 2A asset amount, which shall be equal to the value post-haircuts of all level 2A assets that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction; and*

(d) *the adjusted level 2B asset amount, which shall be equal to the value post-haircuts of all level 2B assets that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction.'*

We consider that the effect of this amendment, when applied in conjunction with paragraph (4) of Annex I of the Delegated Act, produces the following effect:

Bank A:

Assume Bank A holds only Level 1 bonds, with insufficient Level 1 assets to cover its unwinding secured funding. Please see illustration below (no haircuts assumed).

	€'m
Net Outflow	1,500
Unencumbered L1 Assets	2,500
Secured Funding maturing in next 30 days	3,000

The adjusted non-covered bond Level 1 asset amount or '(a)' under paragraph (3) of Annex I above is calculated as follows:

	€'m
Unencumbered L1 Assets	2,500
Secured Funding maturing in next 30 days	(3,000)
Adjust non-covered Level 1 assets	(500)

According to paragraph (4) of Annex I, the calculation of 'excess liquid assets amount' shall be equal to the following (in this case, Bank A has no covered bonds or Level 2 assets):

	€'m
(a) the adjusted non-covered bond level 1 asset amount	(500)
(b) the adjusted level 1 covered bond amount	0
(c) the adjusted level 2A asset amount	0
(d) the adjusted level 2B asset amount	0

	(500)
minus the lesser of:	
(e) the sum of (a),(b),(c) and (d);	(500)
(f) 100/30 times (a);	(1,667)
(g) 100/60 times the sum of (a) and (b);	(833)
(h) 100/85 times the sum of (a), (b) and (c).	(588)
As -€1,667m is the lesser of the four values, this is the figure to be deducted from -€500m:	
Total adjusted assets	(500)
(-) 100/30 times (a)	(1,667)
Excess Liquid Assets Amount	**1,167**

The Liquidity buffer as calculated under paragraph (2) of Annex I is then as follows:

	€'m
Unadjusted Level 1 and Level 2 Assets	**2,500**
minus the lesser of:	
(d) the sum of Unadjusted Level 1 and Level 2 Assets	2,500
(e) the excess liquid assets amount	**1,167**
Liquidity Buffer	**1,333**

In this instance, '(e)' is the lesser amount, and so is deducted from €2,500m: €2,500 - €1,167 = €1,333.

The above calculations operate to produce a 'gross-up' effect, whereby an adjusted liquidity shortfall of €500 is overstated in the calculation of the liquidity buffer through the use of the multipliers under paragraphs (4)(e), (f), (g) and (h).

Recommendation: We consider that this effect is an unintended consequence of the proposed amendments contained within the Draft Delegated Act. We would suggest that paragraph (4) of Annex I be amended to reflect the primacy of Level 1 assets in meeting LCR funding obligations and to eliminate the potential for distortions arising where adjusted Level 1 asset amounts are negative. Clarity on the interaction of negative adjusted values for level 2 assets on level 1 assets would be helpful.

This proposal is designed to ensure that the LCR ratio is not distorted when an institution generates a negative value for the adjusted non-covered bond level 1 asset amount. The failure of an institution to meet the liquidity composition as set out in Article 17 should be recorded by competent authorities but should not be used to distort the mechanics of the LCR calculation.

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For more information contact:

Timothy Buenker
Senior Advisor Banking Supervision
t.buenker@ebf.eu
+32 2 508 37 22