



Brussels, 10.2.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 10.2.2022

amending Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. Background to amendments to the LCR Delegated Regulation

Directive (EU) 2019/2162¹ (the Covered Bond Directive or ‘CBD’), published on 27 November 2019, has established a common framework for covered bonds issued in the Union. Among the minimal obligations set in the CBD, some liquidity requirements specific to covered bonds are established and require an articulation with the already existing liquidity requirements set in the Regulation (EU) No 575/2013² (the Capital Requirements Regulation or ‘CRR’) and in the Commission Delegated Regulation (EU) 2015/61³ (the ‘LCR Delegated Regulation’).

The LCR Delegated Regulation is applicable to all credit institutions, including those issuing covered bonds. Such credit institutions are currently subject to the liquidity coverage requirement (‘LCR’) applicable for a period of 30 calendar days. In accordance with the LCR, a covered bond issuer has to ensure it has sufficient liquid assets to cover the net liquidity outflows including those stemming from the covered bond programme.

At the same time, the CBD requires credit institutions issuing covered bonds to maintain at all times a liquidity buffer (‘cover pool liquidity buffer’) composed of liquid assets available to cover the net liquidity outflows of their covered bonds programmes for a period of 180 days.

The cover pool liquidity buffer established by the CBD includes assets that meet all but one requirement to be recognised as liquid assets under the LCR Delegated Regulation: assets in the cover pool liquidity buffer are subject to the segregation requirement under the Article 12 of the CBD. These segregated assets are legally beyond the reach of creditors other than covered bond investors. The application of the segregation requirement is a key element of the CBD to ensure a high level of protection of covered bonds investors. However, it duplicates the liquidity requirements that covered bonds issuers have to comply with, as two separate liquidity buffers composed of similar liquid assets need to be maintained at the same time. In particular, there is an overlap between the two liquidity requirements during the first 30 days.

To ensure that Member States can address such overlap, the CBD includes an option for Member States to waive the specific cover pool liquidity buffer requirement for the time that the credit institution issuing covered bonds complies with other liquidity requirements under Union law. Going further, this provision of the CBD offers the opportunity to better articulate both the cover pool liquidity requirements and the liquidity requirements under LCR rules.

However, the exercise of the abovementioned waiver to avoid double counting would not be prudentially sound because, after the separation of the credit institution’s estates in stress scenarios, it would reduce the liquid assets in the cover pool intended to respond to its own payment obligations. This is because liquid assets fulfilling the general liquidity coverage

¹ Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29-57).

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1-337).

³ 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. 1-36).

requirement are by definition unencumbered, meaning that they are freely available for the credit institution. Liquid assets held consistently with the cover pool liquidity buffer requirement in the CBD are encumbered due to the asset segregation requirements in that Directive, which means they are beyond the reach of investors in the credit institution's liabilities other than covered bonds.

The most practicable way to remove the overlap, while maintaining prudential soundness, would be to allow credit institutions to treat liquid assets held as part of the cover pool liquidity buffer as unencumbered up to the amount of net liquidity outflows from the associated covered bond programme. This constitutes the first and most important amendment proposed (the new paragraph 2a in Article 7 of the LCR Delegated Regulation). In such a way, the double counting issue would be solved as liquid assets in the cover pool meeting all the qualitative criteria set by the LCR Delegated Regulation (including the monetisation test under Article 8(4) of the Delegated Regulation; a proposed change would allow credit institutions to perform the monetisation test with assets held outside of the cover pool liquidity buffer, as long as those assets are sufficiently representative of the assets held in that buffer) could be accounted in both the cover pool liquidity buffer and the LCR liquidity buffer.

For the purposes of the LCR liquidity buffer, the recognition would be nonetheless limited up to the amount of liquid assets in the cover pool needed to cover the net liquidity outflows stemming from the covered bond programme related to this cover pool. This limitation would ensure that the LCR ratio of covered bonds issuers is not artificially improved by an undue recognition of liquid assets held in the cover pool, and would avoid in particular that some liquid assets held in the cover pool would be taken into account for the calculation of the LCR ratio despite the fact they are segregated and therefore unavailable to cover outflows other than those stemming from the cover pool.

An additional amendment would also be necessary to restore the compliance of some prudentially sound national models of covered bonds issuance with the LCR requirements. Despite being compliant in their main characteristics with the CBD requirements (e.g. rules for the protection of covered bond investor), these national models of covered bonds issuance would suffer from an LCR structurally below 100% and disconnected from the reality of their liquidity risk. To address this issue, an additional amendment would replicate, in a prudentially more conservative manner, already existing provisions of Regulation (EU) 575/2013 related to the calculation of the Net Stable Funding Ratio (NSFR), which allows to consider as unencumbered assets attached as non-mandatory overcollateralisation to a covered bond issuance. The proposed amendment would allow in the LCR Delegated Regulation the same prudential treatment for these assets attached as non-mandatory overcollateralization, provided that the institution issuing covered bonds fulfils certain qualitative and quantitative conditions (not imposed in the case of the NSFR). As a consequence, the proposed amendment would neither jeopardise the legal protection provided to covered bonds investors, in particular by the CBD, nor weaken the liquidity risk prudential profile of the covered bond issuer.

Moreover, the proposed amendment to the LCR Delegated Regulation aims also to clarify some of the current the provisions of the LCR Delegated Regulation.

First, it would replace references to 'secured lending transactions' in Article 28(3) and in Article 32(3)(b) and (4) of the LCR Delegated Regulation with references to 'securities financing transactions' which is a term defined in point (139) of Article 4(1) of the CRR. This would better align the text with the LCR standard agreed at international level by the Basel Committee on Banking Supervision.

Second, it would insert a reference to official export credit agencies (ECAs) in point (g) of Article 7(4) of the LCR Delegated Regulation so as to ensure equal treatment of securities issued by ECAs guaranteed by the central government of a Member State, irrespective of the organisational structure of the respective ECA. This amendment is in line with the recommendations made by the European Banking Authority (EBA) in its report of 20 December 2013⁴, prepared pursuant to Article 509(3) and (5) of Regulation (EU) No 575/2013.

Moreover, several additional changes to the LCR Delegated Regulation are proposed in order to align it with Article 129 of the CRR, as amended by Regulation (EU) 2019/2160⁵ (the latter amends the CRR as regards the regulatory capital treatment of exposures in the form of covered bonds and is thus part of the covered bonds legislative framework together with the CBD) and with the CBD. In particular, some of the criteria set out in Articles 10, 11 and 12 of the LCR Delegated Regulation (formulating the criteria for the treatment of covered bonds as, respectively, Level 1 assets, Level 2A assets and Level 2B assets) refer to (parts of) Article 129 of the CRR. For example, before the adoption of the CBD, the term ‘covered bond’ was defined through a reference to Article 129 of the CRR. After the adoption and entry into force of the CBD, such a reference would seem outdated, because all covered bonds issued in the EU will need to fulfil the requirements of the CBD. By the same token, the transparency requirement, which is essential for the issuing and transactions with covered bonds, is currently contained in Article 129(7) of the CRR. However, with the introduction of the CBD, the topic is now specifically addressed and broadly developed in Article 14 thereof.

The proposal therefore puts forward changes to Articles 10, 11 and 12 of the LCR Delegated Regulation that would ensure the abovementioned alignment. The legal texts are so drafted as to ensure that the eligibility for the favourable liquidity treatment of covered bonds issued before 8 July 2022 that comply with the requirements laid down in Article 52(4) of Directive 2009/65/EC⁶ would not be affected.

1.2. Impact Assessment

The proposed changes are deemed limited in terms of impact, it is therefore not proposed to carry out a detailed impact assessment. The main modification, related to the articulation between the liquidity requirements in the CBD and the LCR Delegated Regulation, has a narrow scope, i.e. it is limited to covered bonds issuers. This amendment would be a correction of a framework considered as inappropriate to covered bonds issuance activities.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission has consulted the Expert Group on Banking, Payments and Insurance, which includes Member States' experts, as well as representatives from the European Parliament, the European Banking Authority and the European Central Bank.

⁴ EBA Report of 20 December 2013 on appropriate uniform definitions of extremely high quality liquid assets (extremely HQLA) and high quality liquid assets (HQLA) and on operational requirements for liquid assets under Article 509(3) and (5) CRR.

⁵ Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds (OJ L 328, 18.12.2019, p. 1-6).

⁶ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32-96).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Given the limited amount of changes to the existing LCR Delegated Regulation, it is proposed to adopt the amendments to that Regulation rather than a new whole text. This would maintain the structure of the original LCR Delegated Regulation. In accordance with Article 462 of the CRR, the Commission remains empowered to review the Delegated Regulation for an indeterminate period of time.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012¹, and in particular Article 460 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/61² should be amended to better allow the credit institutions issuing covered bonds to comply, on the one hand, with the general liquidity coverage requirement for a 30 calendar day stress period, laid down in Article 4(1) of that Delegated Regulation, and on the other hand, with the cover pool liquidity buffer requirement of holding liquid assets to cover net liquidity outflows over the next 180 days, laid down in Article 16 of Directive (EU) 2019/2162 of the European Parliament and of the Council³. In order to clarify some of the existing rules and to align the text of Delegated Regulation (EU) 2015/61 with the definitions laid down in Regulation (EU) No 575/2013 and in Directive (EU) 2019/2162, some additional changes have proven necessary.
- (2) The general liquidity coverage requirement laid down in Article 4(1) of Delegated Regulation (EU) 2015/61 and the cover pool liquidity buffer requirement laid down in Article 16 of Directive (EU) 2019/2162 result in an obligation for credit institutions issuing covered bonds to hold a certain amount of liquid assets for the same period of 30 calendar days. However, credit institutions should not have an obligation to cover the same outflows with different liquid assets for the same period. To address that overlap, a new amendment to the encumbrance criterion under the general liquidity coverage requirement should be introduced. This amendment, together with the provisions already in place in the Article 7 of Delegated Regulation (EU) 2015/61 and still applicable in the case of cover pool segregated assets, would address situations where segregated assets are fulfilling the criteria to be recognised as unencumbered in a prudentially sound way. This new amendment would treat liquid assets held as part

¹ OJ L 176, 27.6.2013, p. 1.

² Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

³ Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29).

of the cover pool liquidity buffer as unencumbered up to the amount of net liquidity outflows stemming from the associated covered bond programme.

- (3) In addition, specific models of covered bond issuance apply in some Member States, characterised by specific legal requirements imposed to covered bonds issuers to protect investors and going beyond those listed in the Directive (EU) 2019/2162. Those covered bonds issuers that are subject to such specific legal requirements carry out similar covered bonds issuances activities than other cover bonds issuers in the EU, and as a consequence have a similar liquidity risk profile. They also provide a high degree of protection to covered bonds issuers notably via the recourse to non-mandatory overcollateralisation for the issuance of their covered bond programmes. However, all the assets of these covered bond issuers would be attached to cover pools and therefore considered encumbered, making them unavailable and ineligible for the purpose of the liquidity coverage ratio (LCR) liquidity buffer. That situation would make those covered bonds issuers breaching their LCR requirement laid down in Regulation (EU) No 575/2013 and Delegated Regulation (EU) 2015/61 and thus create an uneven playing field between issuers despite the similarity of their prudential profile. In order to meet mandatory and non-mandatory overcollateralisation requirements for the purpose of the issuance of a covered bond programme, those covered bonds issuers are operationally constrained to issue junior debt. The general net liquidity outflow of those issuers is higher than the net liquidity outflow stemming from the sole covered bonds issued. In this context, additional amendments should be introduced to allow in some specific and limited situations to recognise as unencumbered the assets held in the cover pool in order to meet non-mandatory overcollateralisation requirements. In order to ensure that such an extension of the recognition of assets held in a cover pool as unencumbered is prudentially sound and consistent with the LCR requirements, covered bond issuers should fulfil several conditions. In particular, only covered bond issuers which are obliged by the virtue of a legal requirement of national law to attach all their assets to covered bonds issuances can benefit from that provision, up to the volume of assets necessary to meet the total net liquidity outflow of the covered bonds issuer.
- (4) Moreover, it is necessary to lay down monetisation rules for the assessment of liquid assets held in a cover pool liquidity buffer.
- (5) Taking into account the recommendations made by the European Banking Authority (EBA) in its report of 20 December 2013⁴, prepared pursuant to Article 509(3) and (5) of Regulation (EU) No 575/2013, all types of bonds issued or guaranteed by Member States' central governments and central banks as well as those issued or guaranteed by multilateral development banks and international organisations should be given level 1 status. In the EBA report an empirical and qualitative analysis regarding the high or extremely high liquidity and credit quality of such bonds has been performed and the report concludes that those bonds fulfil Basel standards in terms of high liquidity and credit quality. Therefore, covered bonds issued by official export credit agencies, irrespective of those agencies' organisational structure, should be qualified as "liquid assets" and consequently given level 1 status.

⁴ EBA Report of 20 December 2013 on appropriate uniform definitions of extremely high quality liquid assets (extremely HQLA) and high quality liquid assets (HQLA) and on operational requirements for liquid assets under Article 509(3) and (5) CRR.

- (6) Some of the conditions for preferential treatment of exposures in the form of covered bonds laid down in Article 129 of Regulation (EU) No 575/2013 have been amended by Regulation 2019/2160 of the European Parliament and of the Council⁵. References to that Article in Delegated Regulation (EU) 2015/61 should therefore be amended accordingly.
- (7) Delegated Regulation (EU) 2015/61 should therefore be amended accordingly.
- (8) This Regulation should be applied in conjunction with the provisions of national law transposing Directive (EU) 2019/2162 and with Regulation (EU) No 575/2013, as amended by Regulation 2019/2160. In order to ensure the consistent application of the new framework establishing the structural features for the issue of covered bonds and the amended requirements for preferential treatment, the date of application of this Regulation should be the same as the date from which Member States are to apply the provisions of national law transposing Directive (EU) 2019/2162, and as the date of application of Regulation (EU) 2019/2160,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/61 is amended as follows:

- (1) in Article 3, the following points (13) to (16) are added:
 - “(13) ‘capital market-driven transaction’ means a capital market-driven transaction as defined in Article 192, point (3), of Regulation (EU) No 575/2013;
 - (14) ‘covered bond programme’ means a covered bond programme as defined in Article 3, point (2), of Directive (EU) 2019/2162 of the European Parliament and of the Council*;
 - (15) ‘cover pool’ means a cover pool as defined in Article 3, point (3), of Directive (EU) 2019/2162;
 - (16) ‘cover pool liquidity buffer’ means the liquidity buffer composed of assets considered as liquid and held as part of the cover pool, in accordance with Article 16 of Directive (EU) 2019/2162.
- (2) Article 7 is amended as follows:
 - (a) the following paragraphs 2a and 2b are inserted:
 - “2a. By way of derogation from paragraph 2, liquid assets that are held as part of the cover pool liquidity buffer shall be deemed to be unencumbered during the 30 calendar day stress period, laid down in Article 4, up to the amount of net liquidity outflows as calculated under Title III of this Regulation, which

⁵ Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds (OJ L 328, 18.12.2019, p. 1).

result from the associated covered bond programmes, provided that those assets meet all other requirements laid down in Title II of this Regulation.

2b. Where liquid assets that are held in the cover pool liquidity buffer are not deemed to be unencumbered pursuant to paragraph 2a of this Article, they shall nonetheless be deemed to be unencumbered during the 30 calendar day stress period, laid down in Article 4, where all of the following conditions are met:

- (a) the covered bond issuer is, by provisions of national law, required to have all its assets attached to covered bonds issuances;
- (b) the liquid assets are attached as non-mandatory overcollateralisation to a covered bond issuance;
- (c) the liquid assets meet all other requirements laid down in Title II of this Regulation;
- (d) the amount of liquid assets deemed to be unencumbered under this paragraph does not exceed the total amount of net liquidity outflows, as calculated under Title III of this Regulation.”;

(b) paragraph 4 is amended as follows:

(i) point (g) is replaced by the following:

“(g) any other entity that performs one or more of the activities listed in Annex I to Directive 2013/36/EU as its main business.”;

(ii) the following second subparagraph is added:

“For the purposes of this Article, SSPEs and official export credit agencies in Member States shall be deemed not included within the entities referred to in the first subparagraph, point (g).”;

(3) in Article 8(4), the following third subparagraph is added:

“For liquid assets held in a cover pool liquidity buffer, the requirement laid down in the first subparagraph shall be considered as fulfilled, where the credit institution regularly, and at least once a year, monetises liquid assets that constitute a sufficiently representative sample of its holdings of assets in the cover pool liquidity buffer without having to be part of that buffer.”;

(4) in Article 10(1), point (f) is amended as follows:

(a) points (i) and (ii) are replaced by the following:

“(i) they are covered bonds as referred to in Article 3, point 1, of Directive (EU) 2019/2162 or they are issued before 8 July 2022 and meet the requirements set out in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, which makes them eligible for preferential treatment as covered bonds until their maturity;

(ii) the exposures to institutions in the cover pool meet the requirements set out in Article 129(1), point (c), and in Article 129(1a) of Regulation (EU) No 575/2013;”;

(b) point (iii) is deleted;

(5) in Article 11, paragraph 1 is amended as follows:

(a) point (c) is amended as follows:

- (i) points (i) and (ii) are replaced by the following:
 - “(i) they are covered bonds as referred to in Article 3, point 1, of Directive (EU) 2019/2162 or they are issued before 8 July 2022 and meet the requirements set out in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, which makes them eligible for preferential treatment as covered bonds until their maturity;
 - (ii) the exposures to institutions in the cover pool meet the requirements set out in Article 129(1), point (c), and in Article 129(1a) of Regulation (EU) No 575/2013;”;
- (ii) point (iii) is deleted;
- (b) in point (d), points (iii), (iv) and (v) are replaced by the following:
 - “(iii) the covered bonds are backed by a pool of assets of one or more of the types described in Article 129(1), points (b), (d), (f) and (g), of Regulation (EU) No 575/2013. Where the pool comprises loans secured by immovable property, the requirements set out in Article 6(2), Article 6(3), point (a), and in Article 6(5) of Directive (EU) 2019/2162 must be met;
 - (iv) the exposures to institutions in the cover pool meet the requirements set out in Article 129(1), point (c), and in Article 129(1a) of Regulation (EU) No 575/2013;
 - (v) the credit institution investing in the covered bonds and the issuer meet the transparency requirement laid down in Article 14 of Directive (EU) 2019/2162;”;
- (6) in Article 12(1), point (e) is amended as follows:
 - (a) point (i) is replaced by the following:
 - “(i) they are covered bonds as referred to in Article 3(1) of Directive (EU) 2019/2162 or they are issued before 8 July 2022 and meet the requirements set out in Article 52(4) of Directive 2009/65/EC, as applicable on the date of their issue, which makes them eligible for prudential treatment as covered bonds until their maturity;”;
 - (b) points (ii) and (iii) are deleted;
- (7) in Article 28, paragraph 3 is amended as follows:
 - (a) in the first subparagraph, the introductory wording is replaced by the following:

“Credit institutions shall multiply liabilities maturing within 30 calendar days and resulting from securities financing transactions or capital market-driven transactions by:”;
 - (b) in the second subparagraph, the first sentence is replaced by the following:

“By way of derogation from the first subparagraph, where the counterparty to the securities financing transactions or capital market-driven transaction is the domestic central bank of the credit institution, the outflow rate shall be 0 %.”;
 - (c) the third subparagraph is replaced by the following:

“By way of derogation from the first subparagraph, for securities financing transactions or capital market-driven transactions that would require an outflow

rate under that subparagraph higher than 25 %, the outflow rate shall be 25 % where the counterparty to the transaction is an eligible counterparty.”;

(8) Article 32 is amended as follows:

(a) in paragraph 3, point (b), the introductory wording is replaced by the following:

“(b) monies due from securities financing transactions and capital market-driven transactions with a residual maturity of no more than 30 calendar days shall be multiplied by:”;

(b) in paragraph 4, the first sentence is replaced by the following:

“Paragraph 3, point (a), shall not apply to monies due from securities financing transactions and capital market-driven transactions that are collateralised by liquid assets in accordance with Title II as referred to in paragraph 3, point (b).”

Article 2

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

It shall apply from 8 July 2022.

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

Done at Brussels, 10.2.2022

For the Commission
The President
Ursula VON DER LEYEN