MFSA MALTA FINANCIAL SERVICES AUTHORITY

# BANKING RULE BR/27
# THE APPLICATION OF CERTAIN OPTIONS AND NATIONAL DISCRETIONS

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# THE APPLICATION OF CERTAIN OPTIONS AND NATIONAL DISCRETIONS

## Introduction

1. In terms of article 4(7) of the Banking Act (Cap. 371) ("the Act"), the Malta Financial Services Authority ("the Authority") as appointed under article 3(1) of the Malta Financial Services Act (Cap. 330), may make Banking Rules ("the Rules") as may be required for carrying into effect any of the provisions of the Act. The Authority may amend or revoke such Rules and any amendment or revocation thereof shall be officially communicated to credit institutions and the Authority shall make copies thereof available to the public.

2. Part 1 of the Rule on The Application of Certain Options and National Discretions ("ONDs") is being made pursuant to article 4(6) of the Act and the CRR (Implementing and Transitional Provisions) Regulations (S.L. 371.17) ('the Regulations'), and shall be read in conjunction with such Regulations. This Part also implements options and national discretions laid out in the CRR. Part 2 of the Rule is being made pursuant to the options and national discretions stipulated in the Commission Delegated Regulation (EU) 2015/61.

3. It should be emphasised, however, that the Rule must not be construed to be solely a substitute for a reading of the Act itself and should be read in conjunction with the Act. The responsibility for observing the law rests entirely with the credit institution and the individual persons concerned.

## Scope and Application

4. This Rule applies to credit institutions, as defined in Article 2(1) of the Act.

5. This Rule provides for the approach that the Authority undertakes in the exercise of the options and discretions laid down in the Regulations and provided for in the European Union legislative framework (the CRR and Commission Delegated Regulation (EU) 2015/61, as amended from time to time[1], amongst others), which concern the prudential supervision of credit institutions.

6. The Rule stipulates the general aspects that the Authority shall consider in determining the prudential requirements for credit institutions and provides the

[1] 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

manner in which the Authority will assess requests and/or decisions involving the exercise of an option or discretion.

## Definitions

7. For the purposes of this Rule, unless the context otherwise requires, the following shall apply:

   '*level 1 assets*' shall have the same meaning as that assigned to it in point (1) of Article 3 of the Commission Delegated Regulation (EU) 2015/61;

   '*liquidity buffer*' shall have the same meaning as that assigned to it in point (3) of Article 3 of the Commission Delegated Regulation (EU) 2015/61;

   '*net liquidity outflows*' shall have the same meaning as that assigned to it in point (7) of Article 3 of the Commission Delegated Regulation (EU) 2015/61

   '*public sector entity*' shall have the same meaning as that assigned to it in point (8) of Article 4(1) of the CRR.

   Words and expressions used in this Rule which are also used in the Act, in the CRR or in the Commission Delegated Regulation (EU) 2015/61, but which are not defined herein, shall have the same meaning assigned to them as in the Act, the CRR or in the Commission Delegated Regulation (EU) 2015/61.

## Part 1 – Options and National Discretions in accordance with the CRR (Implementing and Transitional Provisions) Regulations and the CRR

### 1.1 Interdependent Assets and Liabilities

8. For the purposes of regulation 6C of the Regulations and Article 428f(1)(a) to (c) and (f) of the CRR, the credit institution shall provide to the Authority a comprehensive description of the underlying assets and liabilities which will be treated as interdependent as well as the counterparties involved. The description shall demonstrate that:

   i. the credit institution acts solely as a pass-through unit to channel funding from the liability into the corresponding asset;
   ii. the individual interdependent assets and liabilities are clearly identifiable and have the same principal amount;

iii. the asset and interdependent liability have substantially matched maturities, with a maximum delay of 20 days between the maturity of the asset and the maturity of the liability;
iv. the counterparties for each pair of interdependent assets and liabilities are not the same.

9. For the purposes of regulation 6C of the Regulations and Article 428f(1)(d) and (e) of the CRR, the credit institution shall submit to the Authority a legal opinion which is issued either by an external independent third party or by an internal legal advisor, and approved by the board of directors. The legal opinion shall confirm that the contractual arrangements and the legal and regulatory framework ensure that the interdependent liability cannot be used to fund other assets and that flows from the asset cannot be used for purposes other than repaying the interdependent liability.

10. The credit institution shall submit to the Authority ex ante information about:
    a) the outstanding balance of the assets and liabilities which would be treated as interdependent and
    b) the impact on the net stable funding ratio (NSFR) if the Authority were to allow the credit institution to treat an asset and a liability as interdependent.

11. Article 428f(2) of the CRR clarifies that assets and liabilities linked to the products listed under this provision shall be considered to meet the conditions set out in paragraph 1 of the same Article and be considered as interdependent. As such, the application of this provision does not require prior approval from the Authority. Nevertheless, in the context of ongoing supervision, the Authority may regularly examine if assets and liabilities being treated as interdependent pursuant to Article 428f(2) of the CRR fully correspond to the products listed under this provision.

## 1.2 Preferential Treatment within a Group or an Institutional Protection Scheme (IPS)

### 1.2.1 General Conditions

12. For the purposes of regulation 6D of the Regulations, the credit institution shall provide the following information to the Authority:

    a) the name of the entity which is the counterparty to the transaction;

    b) information on the relevant asset, liability or committed credit or liquidity facility which will benefit from the preferential treatment; and

    c) the NSFR of the credit institution and of the counterparty should the preferential treatment be granted.

13. With respect to the requirement laid down in Article 428h(1)(a) of the CRR specifying the counterparty to the transaction for which a preferential treatment may be applied, the credit institution shall consider the following:

    a) Where points (i) or (ii) of Article 428h(1)(a) of the CRR apply, the parent shall be understood as a parent undertaking as defined in point (15) of Article 4(1) of the CRR and subsidiary shall be understood as defined in point (16) of Article 4(1) of the CRR. In those cases, the credit institution and the counterparty shall belong to the same scope of consolidation as defined in Article 18(1) of the CRR.

    b) Where points (iv) or (v) of Article 428h(1)(a) of the CRR apply, a preferential treatment may only be granted where the conditions referred to in Article 113(7) have been met or where credit institutions and counterparties are situated in the same Member State and are permanently affiliated to a central body which supervises them and which is established in the same Member State as referred to in Article 10 of the CRR. In such cases, the Authority shall not apply the preferential treatment to deposits referred to in Article 428g of the CRR, which already receive a dedicated treatment of being recognised as liquid assets pursuant to the Commission Delegated Regulation (EU) 2015/61.

14. With respect to the requirement laid down in Article 428h(1)(b) of the CRR, where the credit institution would like to apply a higher available stable funding factor to a committed credit or liquidity facility granted to the credit institution by a counterparty referred to in Article 428h(1)(a) of the CRR, the credit institution shall demonstrate to the Authority that the cancellation clauses for the contracts include a notification period of at least six months and that the agreements and commitments do not contain any clause that would allow the funding provider to:

    a) require any conditions to be fulfilled before the funding is provided;
    b) withdraw from its obligations to fulfil these agreements and commitments;
    c) change substantially the terms of agreements and commitments without prior approval from the Authority.

15. With respect to the requirement laid down in Article 428h(1)(c) of the CRR, the credit institution shall demonstrate to the Authority the following:

    a) where the credit institution intends to apply a higher available stable funding factor to a committed credit or liquidity facility received from a counterparty referred to in Article 428h(1)(a) of the CRR, the corresponding outflows that could arise from the relevant facility are taken into account in the liquidity recovery plan and contingency funding plan of the counterparty;

    b) where the credit institution intends to apply a lower required stable funding factor to a committed credit or liquidity facility granted to a counterparty referred to in Article 428h(1)(a) of the CRR, the inflows that could potentially arise from the relevant facility are taken into account in the liquidity recovery plan and contingency funding plan of the counterparty.

16. Where the credit institution has received funding or may receive it by drawing upon committed credit or liquidity facilities granted by a counterparty referred to in Article 428h(1)(a) of the CRR, the Authority may authorise the credit institution to apply a higher available stable funding factor up to the required stable funding factor applied by the counterparty. Where the credit institution has provided funding or has granted committed credit or liquidity facilities to a counterparty referred to in Article 428h(1)(a) of the CRR, the Authority may allow the credit institution to apply a lower required stable funding factor that should be at least equal to the available stable funding factor applied by the counterparty.

### 1.2.2 Additional conditions in the case of an application where the counterparty is located in another Member State

17. For the purpose of the assessment pursuant to Article 428h(2) of the CRR with regard to credit institutions established in different Member States, the Authority will take into account whether the following criteria, which specify the conditions of the legislative framework, are met.

18. With respect to the requirement laid down in Article 428h(2)(a) of the CRR, the credit institution shall demonstrate to the Authority that any application for preferential treatment is supported by a reasoned and formalised decision of the board of directors or management bodies, as the case may be, of both the credit institution and the counterparty, ensuring that they fully understand the implications of the preferential treatment in the event that it is granted and that cancellation clauses include a notification period of at least six months.

19. With respect to the requirement laid down in Article 428h(2)(b) of the CRR, the credit institution shall demonstrate to the Authority that:

    a) the funding provider has been fulfilling the NSFR on an individual basis, when applicable, for at least one year;

    b) where the NSFR requirement has been not been applicable under the legislation in place for a full year, the funding provider has a sound funding position, which would be considered to have been achieved if the liquidity and funding management of the funding provider evaluated in the SREP is deemed to be of high quality.

20. With respect to the requirement laid down in Article 428h(2)(c) of the CRR, the credit institution shall demonstrate to the Authority that the funding provider monitors on a regular basis the funding position of the recipient of the funding.

## 1.3 Derogation from the application of prudential requirements on an individual basis

21. In order to determine whether there are the grounds for the application of the waivers in terms of regulation 2B of the Regulations, the Authority shall perform

its review following the receipt of the information and/or documentation required in accordance with paragraphs 22-33 below.

### 1.3.1 Documentation related to the waivers laid down in regulation 2B of the Regulations

#### 1.3.1.1 Documentation related to the waivers laid down in regulation 2B(1)(a) of the Regulations

22. For the purposes of assessing the fulfilment of the conditions laid down in the Article 7(1) of the CRR, the credit institution shall submit the following documents, which the Authority shall consider to be evidence that the conditions of such Article have been satisfied:

    i. a letter signed by the parent undertaking's chief executive officer (CEO), with approval from the board of directors, stating that the supervised group complies with all the conditions for granting the waiver(s) laid down in Article 7 of the CRR;

    ii. a legal opinion, issued either by an external independent third party or by an internal legal advisor, approved by the board of directors of the parent undertaking, demonstrating that there are no obstacles to the transfer of own funds or repayment of liabilities by the parent undertaking resulting from any applicable legislative or regulatory acts or legally binding agreements;

    iii. an internal assessment which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the credit institution in accordance with the Recovery and Resolution Regulations (S.L. 330.09).

    iv. evidence that the parent undertaking has guaranteed all the obligations of the subsidiary. As an alternative to a guarantee, credit institutions may provide evidence that the risks in the subsidiary are negligible;

    v. the list of the entities for which the waiver is requested;

    vi. a description of the functioning of the financing arrangements to be used in the event that a credit institution faces financial difficulties, including information about how those arrangements ensure funds that are (a) available at will, and (b) freely transferrable;

    vii. a statement signed by the CEO and approved by the board of directors of the parent undertaking and the other institution(s) seeking the waiver, certifying that there are no practical impediments to the transfer of funds or the repayment of liabilities by the parent undertaking;

    viii. documentation approved by the board of directors of the parent undertaking and the other institution(s) seeking the waiver attesting that

the risk evaluation, measurement and control procedures of the parent undertaking cover all the institutions included in the application;

ix. a brief overview of the risk evaluation, measurement and control procedures of the parent institution, or, in the case of a horizontal group of institutions, of the consolidating institution, as well as information about the contractual basis, if any, upon which the risk management for the group as a whole can be controlled by the relevant steering entity;

x. the structure of the voting rights attached to shares in the capital of the subsidiary;

xi. any agreement that grants the parent undertaking the right to appoint or remove a majority of the members of the board of directors of the subsidiary.

#### 1.3.1.2 Documentation related to the waivers laid down in regulation 2B(1)(b) of the Regulations

23. Credit institutions or the subsidiaries applying for a waiver under Article 7(3) of the CRR shall submit to the Authority the following documents:

i. a letter signed by the parent undertaking's CEO, with approval from the board of directors, stating that the supervised group complies with all the conditions for granting the waiver(s) laid down in Article 7 of the CRR;

ii. a legal opinion, issued either by an external independent third party or by an internal legal advisor, approved by the board of directors of the parent undertaking, demonstrating that there are no obstacles to the transfer of funds or repayment of liabilities to the parent undertaking resulting from any applicable legislative or regulatory acts or legally binding agreements;

iii. an internal assessment which confirms that the grant of a waiver has duly been taken into account in the recovery plan and the group financial support agreement, if available, drawn up by the institution in accordance with the Recovery and Resolution Regulations;

iv. a description of the functioning of the financing arrangements to be used in the event that the parent undertaking faces financial difficulties, including information about how those arrangements ensure funds that are (a) available at will and (b) freely transferrable;

v. a statement signed by the relevant subsidiary undertakings' CEOs and approved by the board of directors of such subsidiary undertakings, certifying that there are no practical impediments to the transfer of funds or the repayment of liabilities to the parent undertaking;

vi. documentation approved by the board of directors of the entity responsible for the risk evaluation, measurement and control procedures

relevant for consolidated supervision attesting that the risk evaluation, measurement and control procedures cover the parent undertaking;

vii. a brief overview of the risk evaluation, measurement and control procedures relevant for consolidated supervision.

24. In the case of subsidiaries established in non-EEA countries, credit institutions shall submit, in addition to the above-mentioned documents, written confirmation by the overseas regulatory authority in a third country for the prudential supervision of such subsidiaries that there are no practical impediments to the transfer of own funds or repayment of liabilities from the relevant subsidiary to the parent institution seeking the waiver.

### 1.3.2 Regulation 2B(1)(a) of the Regulations - waiver of requirements for subsidiary credit institutions

25. In order for the Authority to assess whether the condition laid down in Article 7(1)(a) of the CRR (that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the subsidiary's parent undertaking) has been met, the credit institution shall prove to the Authority that:

a) the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;

b) the formal decision-making process regarding the transfer of own funds between the parent undertaking and subsidiary ensures prompt transfers;

c) the policies and procedures of the parent and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the parent undertaking;

d) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

e) no third parties, which are any party that is not the parent, a subsidiary, a member of their decision-making bodies or a shareholder, are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

f) the grant of a waiver has duly been taken into account in the recovery plan and, if any, the group financial support agreement;

g) the waiver has no disproportionate negative effects on the resolution plan;

h) the COREP "Group Solvency" template (Annex I to Commission Implementing Regulation (EU) No 680/2014[2]), which aims to provide a global view of how risks and own funds are distributed within the group, shows no discrepancy in this regard.

26. In order for the Authority to assess the credit institution's compliance with the requirement laid down in Article 7(1)(b) of the CRR (that either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest), the credit institutions shall ensure that:

    a) they comply with the national legislation implementing Chapter 2 of Title VII of the CRD;

    b) the supervisory review and evaluation process (SREP) for the parent undertaking shows that the arrangements, strategies, processes and mechanisms it has implemented ensures the sound management of its subsidiaries;

    c) the waiver has no disproportionate negative effects on the resolution plan;

    d) with regard to risks being of negligible interest, the subsidiary's contribution to the total risk exposure amount does not exceed 1% of the total exposure amount of the group or its contribution to total own funds does not exceed 1% of the total own funds of the group[3]. (Nonetheless, in exceptional cases the Authority may apply a higher threshold if duly justified. In any case, the sum of the contributions of the subsidiaries considered negligible in terms of the total risk exposure amount must not exceed 5% of the total exposure amount of the group and their contributions to total own funds must not exceed 5% of the total own funds of the group.)

27. In order for the Authority to assess compliance with the requirement laid down in Article 7(1)(c) of the CRR (that the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary), the credit institution shall prove to the Authority that:

    a) senior management of the parent undertaking is sufficiently involved in strategic decisions, setting the risk appetite and the risk management of the subsidiary;

    b) the risk management and compliance functions of the subsidiary and parent undertaking fully cooperate;

[2] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

[3] Commission Implementing Regulation (EU) No 680/2014, Annex II, Part II, paragraph 37.

c) the information systems of the subsidiary and parent undertaking are integrated or, at least, fully aligned;

d) the subsidiary to be waived complies with the group risk management policy and the risk appetite framework (the limit system in particular);

e) the SREP for the parent undertaking does not show deficiencies in the area of internal governance and risk management.

28. In order for the Authority to assess compliance with the requirement laid down in Article 7(1)(d) of the CRR (that the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the board of directors of the subsidiary), credit institutions shall ensure that there are no side agreements that impede the parent undertaking from imposing any measures necessary to steer the group towards compliance with prudential requirements.

29. In assessing an application for a prudential waiver in accordance with Article 7(1) of the CRR, the Authority shall also take into account considerations related to the leverage ratio, given that pursuant to Article 6(5) of the CRR, granting such a waiver will also automatically waive the leverage requirement at the same level of the group structure.

### 1.3.3 Regulation 2B(1)(b) of the Regulations - waiver of requirements for parent institutions

30. In order for the Authority to assess whether the condition laid down in Article 7(3)(a) of the CRR (that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution) has been met, credit institutions shall demonstrate that:

a) the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;

b) the formal decision-making process regarding the transfer of own funds to the parent credit institution ensures prompt transfers;

c) the by-laws of the parent and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities to the parent credit institution;

d) there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

e) no third parties are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

f) the grant of a waiver has duly been taken into account in the recovery plan and, if any, the group financial support agreement;

g) the waiver has no disproportionate negative effects on the resolution plan;

h) the COREP "Group Solvency" template, which aims to provide a global view of how risks and own funds are distributed within the group, shows no discrepancy in this regard.

31. In addition to these specifications, in order for the Authority to assess the condition referred to in Article 7(3)(a) of the CRR (that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution), credit institutions shall ensure that:

a) the own funds held by subsidiary institutions located in the European Economic Area (EEA) are sufficient to grant the waiver to the parent institution (i.e. the granting of the waiver should not be justified on the basis of resources coming from third countries, unless official EU recognition of the equivalence of the third country is available and there are no other impediments);

b) the minority shareholders of the subsidiary institutions do not together hold voting rights that would allow them to block an agreement, decision or act of the general meeting in terms of the applicable national legislation;

c) foreign exchange restrictions, if any, do not prevent the prompt transfer of own funds or repayment of liabilities.

32. In order for the Authority to assess compliance with the requirement laid down in Article 7(3)(b) of the CRR (that the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution), credit institutions shall ensure that:

viii. senior management of the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision is sufficiently involved in strategic decisions, setting the risk appetite and the risk management of the parent institution;

ix. there is full cooperation between the risk management and compliance functions of the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision and the parent institution;

x. the information systems of the entity responsible for the risk evaluation, measurement and control procedures relevant for

consolidated supervision and those of the parent institution are integrated or, at least, fully aligned;

xi. the parent institution that would benefit from the waiver complies with the group risk management policy and the risk appetite framework (the limit system in particular);

xii. the SREP for the entity responsible for the risk evaluation, measurement and control procedures relevant for consolidated supervision does not show deficiencies in the area of internal governance and risk management.

33. In assessing an application for a prudential waiver in accordance with Article 7(3) of the CRR, the Authority shall also take into account considerations related to the leverage ratio, given that pursuant to Article 6(5) of the CRR granting such a waiver will also automatically waive the leverage requirement at the same level of the group structure.

## 1.4 Derogation to the application of liquidity requirements on an individual basis

34. For the purposes of the waiver referred to in regulation 2C of the Regulations and in terms of Article 8 of the CRR, the following requirements can be waived:

i. the application of the liquidity coverage requirement under Article 412(1) of the CRR and further specified in Commission Delegated Regulation (EU) 2015/61;

ii. the application of the stable funding requirement under Article 413(1) of the CRR and further specified under Title IV of Part Six of the CRR;

iii. the application of Section 36 of BR/24 on Internal Governance of Credit Institutions Authorised under the Banking Act;

iv. the application of the associated liquidity reporting requirements under Article 430(1)(d) of the CRR, including the reporting requirements related to the additional liquidity monitoring metrics referred to in Article 415(3) of the CRR.

35. In order to apply for the waiver referred to in regulation 2C of Regulations, credit institutions shall take into consideration the following factors:

v. The Authority shall exclude liquidity reporting requirements from such waivers (i.e. the reporting requirements will remain in place), with the possible exception of cases where all the credit institutions that form a liquidity sub-group are located in Malta.

vi. Credit institutions that already benefit from a waiver of the stable funding requirement under Article 413(1) of the CRR, are, in principle, already waived

from the application of the NSFR as specified under Title IV of Part Six of the CRR. The Authority may review existing waiver decisions at any time to determine whether credit institutions continue to fulfil the relevant conditions for the granting of the waiver.

vii. When considering whether to waive the application of Section 36 of BR/24 to a credit institution, the Authority shall take into account whether the credit institution meets all the conditions set out in Article 8 of the CRR and further specified below, and whether the application for such a waiver is made in conjunction with a waiver of the application of both the LCR and the NSFR.

### 1.4.1 Documentation for Article 8 of the CRR

36. For the purpose of regulation 2C of the Regulations and the assessment referred to in Article 8 of the CRR, a credit institution shall submit to the Authority the following documents:

a. a cover letter signed by the credit institution's CEO, approved by the board of directors, stating that the credit institution complies with all of the waiver criteria as set out in Article 8 of the CRR;

b. a description of the extent of the liquidity sub-group(s) to be constituted together with a list of all the entities that would be covered by the waiver;

c. a precise description of the requirements in respect of which the credit institution is asking for a waiver.

### 1.4.2 General conditions – all waiver applications

37. When applying for any liquidity waivers as referred to in regulation 2C of the Regulations, credit institutions shall provide the Authority with the following information:

a. Details of the entities that will be included in the sub-group, the name of the entity within which the liquidity management function for the sub-group will be allocated and an explanation of the rationale for the application of the waiver;

b. With respect to the requirement laid down in Article 8(1)(a) of the CRR (that the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six of the CRR), the credit institution shall provide the Authority with the following:

(i) A calculation of the liquidity requirement(s) for which the waiver is requested (i.e. the LCR and/or the NSFR) at the level of the liquidity sub-group, which demonstrates that the sub-group meets the relevant

requirement(s) applicable in the jurisdiction where the sub-group is established;

(ii) Internal monitoring reports which confirm a sound liquidity and/or funding position. A liquidity and/or funding position would be considered to be sound if the consolidating credit institution has had an adequate level of liquidity and/or funding management and control over the past two years. The credit institution shall flag any obstacles to the free transfer of funds that may arise, either in normal or stressed market conditions, from national liquidity provisions;

(iii) The LCR and/or NSFR of each entity of the sub-group and the existing plans to achieve or maintain compliance with the relevant requirement(s) should the waiver not be granted.

c. With respect to the condition set out in Article 8(1)(b) of the CRR (that the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity and/or funding positions of all credit institutions within the sub-group that are subject to the waiver and ensures a sufficient level of liquidity and/or funding for all of these credit institutions), the credit institution shall provide the Authority with the following:

(i) the organisation chart of the liquidity management function within the sub-group showing the level of centralisation at the sub-group level;

(ii) a description of the processes, procedures and tools used for the internal monitoring of the entities' liquidity positions at all times and the extent to which they are designed at the sub-group level;

(iii) a description of the liquidity contingency plan for the liquidity sub-group.

d. With respect to the condition laid down in Article 8(1)(c) of the CRR (that the credit institutions have entered into contracts that, to the satisfaction of the Authority, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they come due), the credit institution shall provide the Authority with the following:

(i) the contracts concluded between entities which are part of the liquidity sub-group, which do not provide for any amount or any time limit or which provide for a time limit as specified below under sections 1.4.2 and 1.4.3 of this Rule, as applicable;

(ii) evidence that the free movement of funds and the ability to meet individual and joint obligations as they come due are not subject to any conditions that may prevent or limit their exercise, confirmed by a legal opinion to that effect issued either by an external independent third party or by an internal legal advisor, approved by the board of directors;

(iii) evidence that, unless the waiver is revoked by the Authority[4], the legal contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to a notice period as specified below under sections 1.4.2 and 1.4.3 of this Rule, as applicable.

e. With regard to the condition laid down in Article 8(1)(d) of the CRR (that there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in Article 8(1)(c) of the CRR), the credit institution shall provide the Authority with the following:

(i) a legal opinion, issued either by an external independent third party or by an internal legal advisor, approved by the board of directors, that supports the absence of legal impediments, e.g. with regard to national insolvency laws;

(ii) an internal assessment which concludes that there are no current or foreseen material practical or legal impediments to the fulfilment of the contract referred to above and which confirms that the consequences of the granting of a waiver has duly been taken into account in the resolvability assessment provided by the credit institution to the Resolution Authority in relation to the recovery plan and the group financial support agreement, if available, drawn up in accordance with the Recovery and Resolution Regulations

(iii) an internal assessment which concludes that the waiver has no disproportionate negative effects on the resolution plan.

### 1.4.3 Further specifications – waiver of the LCR requirement

38. In the case of a waiver of the LCR requirement, with regard to the specifications of the contracts referred to under Article 8(1)(c) of the CRR, credit institutions shall ensure that:

(i) the contracts do not provide for any time limit or provide for a time limit that exceeds the validity of the waiver decision by at least six months;

(ii) there is evidence that, unless the waiver is revoked by the Authority, the contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to a six-month notice period, with prior mandatory notice to the Authority.

### 1.4.4 Further specifications – waiver of the NSFR requirement

39. In the case of a waiver of the NSFR requirement, with regard to the specifications of the contracts referred to under Article 8(1)(c) of the CRR, credit institutions shall ensure that:

[4] The contract shall include a clause providing that if the Authority revokes the waiver the contract may be cancelled unilaterally with immediate effect.

(i) the contracts do not provide for any time limit or provide for a time limit that exceeds the validity of the waiver decision by at least six months;

(ii) there is evidence that, unless the waiver is revoked by the Authority, the contracts cannot be called off or cancelled unilaterally by either party, or that the legal contracts are subject to an six-month notice period, with prior mandatory notice to the Authority.

### 1.4.5 Waivers of the LCR requirement at the cross-border level

40. In the case of an application for a waiver of the LCR requirement under regulation 2C of the Regulations with regard to credit institutions which are established in several Member States, the Authority will, in addition to the specifications for granting a waiver mentioned above, conduct its assessment as follows:

a. For the purposes of the Authority's assessment of, in accordance with Article 8(3)(a) of the CRR, the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Section 36 of BR/24 across the single liquidity sub-group, credit institutions shall prove to the Authority that the liquidity SREP does not reveal breaches at the time of application and over the previous three months and the liquidity management of the credit institution as evaluated in the SREP is deemed to be of a high quality.

b. In the case of an application for a waiver of the LCR requirement, with respect to Article 8(3)(b) of the CRR and the distribution of amounts, and the location and ownership of the required liquid assets to be held within the single liquidity sub-group, account shall be taken of whether significant sub-entities[5] or significant groups of sub-entities in one Member State maintain in that Member State an adequate amount of high quality liquid assets (HQLA). An indicative amount of 75% of the level of HQLA that would be required in order to comply with the LCR requirement at the solo or sub-consolidated level, in accordance with Commission Delegated Regulation (EU) 2015/61 and the CRR, would be deemed, in principle, adequate for these purposes. A lower or higher level of HQLA could also be considered adequate in view of the particular characteristics of the liquidity sub-group; in particular, because of the existence of specific internal arrangements within it that ensure an appropriate management of its liquidity risk.[6]

[5] This requirement applies to subsidiaries that meet at least one of the numerical thresholds specified in Articles 50, 56, 61 or 65 of the SSM Framework Regulation on a solo basis. If more than one subsidiary is established in a Member State but none of them meet these numerical thresholds at solo level, this condition should also apply if all entities established in that Member State, on the basis of either the consolidated position of the parent company in that Member State or the aggregated position of all subsidiaries that are subsidiaries of the same EU parent company and are established in said Member State, meet at least one of the numerical thresholds specified in Articles 50, 56, and 61 of the SSM Framework Regulation.

[6] The computation of the amount of HQLA at the solo or sub-consolidated level should not take into account any preferential treatment, in particular that available under Article 425(4) and (5) of the CRR and Article 34(1), (2) and (3) of Commission Delegated Regulation (EU) 2015/61 in relation to the LCR.

c. In the case of an application for a waiver of the NSFR requirement, with respect to Article 8(3)(b) of the CRR and the distribution of amounts and location of available stable funding within the single liquidity sub-group, account shall be taken of whether significant sub-entities[7] or significant groups of sub-entities in one Member State maintain in that Member State an adequate amount of available stable funding. An indicative amount of 75% of the level of available stable funding that would be required in order to comply with the NSFR requirement at the solo or sub-consolidated level, in accordance Article 413(1) of the CRR, as further specified under Title IV of Part Six of the CRR, would be deemed, in principle, adequate for these purposes. A lower or higher level of available stable funding could also be considered adequate in view of the particular characteristics of the liquidity sub-group; in particular, because of the existence of specific internal arrangements within it that ensure an appropriate management of its liquidity risk.[8]

d. With respect to the assessment, under Article 8(3)(d) of the CRR, of the need for stricter parameters than those set out in Part Six of the CRR, in the case of a waiver for a credit institution located in a participating Member State and a non-participating Member State, and in the absence of national provisions which set stricter parameters, the LCR requirement is the highest applicable level among the countries where the subsidiaries and the top consolidating entity are located, if allowed by national law.

e. To assess whether there is a full understanding of the implications of such a waiver under Article 8(3)(f) of the CRR, the Authority will take into account:

   (i) the existing back-up plans to meet legal requirements should the waivers not be granted/cease to be granted;

   (ii) a full assessment of the implications by the board of directors, and by the competent authorities as required, which will be performed and submitted to the ECB.

## 1.5 Exposures to Public Sector Entities

41. In terms of regulation 4A of the Regulations, exposures to the Malta Development Bank shall be considered as exposures to the Government of Malta in line with Article 116(4) of the CRR.

[7] This requirement applies to subsidiaries that meet at least one of the numerical thresholds specified in Articles 50, 56, 61 or 65 of the SSM Framework Regulation on a solo basis. If more than one subsidiary is established in a Member State but none of them meet these numerical thresholds at solo level, this condition should also apply if all entities established in that Member State, on the basis of either the consolidated position of the parent company in that Member State or the aggregated position of all subsidiaries that are subsidiaries of the same EU parent company and are established in said Member State, meet at least one of the numerical thresholds specified in Articles 50, 56, and 61 of the SSM Framework Regulation.

[8] The computation of the amount of available stable funding at the solo or sub-consolidated level should not take into account any preferential treatment, in particular that available under Article 428h of the CRR.

## 1.6 Exemptions from the Limits to Large Exposures

### 1.6.1 Covered Bonds

42. Pursuant to regulation 6(1) of the Regulations and without prejudice to the application of regulation 6(2) of the Regulations, the Authority shall exempt the exposures listed in Article 400(2)(a) of the CRR from the application of Article 395(1) of the CRR for 80% of the nominal value of the covered bonds, provided that the conditions set out in Article 400(3) of the CRR are fulfilled. The Authority intends to grant such exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution.

### 1.6.2 Regional Governments or Local Authorities

43. Pursuant to regulation 6(1) of the Regulations and without prejudice to the application of regulation 6(2) of the Regulations, the Authority shall exempt the exposures listed in Article 400(2)(b) of the CRR from the application of Article 395(1) of the CRR for 80% of their exposure value, provided that the conditions set out in Article 400(3) of the CRR are fulfilled. The Authority intends to grant such exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution.

### 1.6.3 Third-Country Intragroup Exposures

44. With reference to regulation 6(1) of the Regulations and without prejudice to the application of regulation 6(2) of the Regulations, the Authority shall exempt fully the exposures listed in Article 400(2)(c) of the CRR incurred by a credit institution to the undertakings referred to therein, insofar as those exposures are incurred to undertakings that are established in the Union, from the large exposures limit laid down in Article 395(1) of the CRR, provided that the requirements set out in Article 400(3) of the CRR are fulfilled and insofar as those undertakings are covered by the same supervision on a consolidated basis in accordance with the CRR, Directive 2002/87/EC of the European Parliament and of the Council[9], or with equivalent standards in force in a third country, as further specified in paragraph 45. The Authority intends to grant such exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution.

45. For the purposes of paragraph 44 and of assessing whether the conditions in Article 400(3) of the CRR are fulfilled, in addition to the generally applicable factors reflected in paragraphs 46 to 47 below, credit institutions shall ensure

[9] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

the satisfaction of the following non-exhaustive list of factors, as appropriate, in view of the specific circumstances of each credit institution:

i. There are adequate arrangements in place which enable the Authority to exchange information, including personal data, and cooperate with the overseas regulatory authority responsible for the prudential supervision of the counterparty on a permanent basis.

ii. The applicant credit institution is in a position to provide sufficient regular information on those third-country entities to which it has, or intends to have, exposures which would be covered by the requested exemption, were it to be granted. The existence of obstacles for the applicant credit institution in providing such information, for example owing to prohibition in the legal framework applicable in the third country, shall be considered as an important deterrent factor for granting the requested exemption.

iii. The booking practices of the credit institution are aligned with its risk management strategy and risk control mechanisms, at both the individual level and the consolidated level.

iv. The structure of the part of the group which is located outside the EU does not hinder the timely repayment of the exposure by the counterparty to the credit institution.

v. There have been no negative precedents with regard to the transfer of funds by the counterparty to the credit institution.

vi. The credit institution has established sound collateral management and independent price verification (IPV) capabilities to ensure (a) intragroup exposures are independently quantified, (b) collateral received is of good quality and segregated from other group entities, and (c) disputes are promptly resolved.

vii. The exemption has no disproportionate negative effects on the preferred resolution approach.

#### 1.6.3.1 Conditions for assessing an exemption from the large exposure limit, in accordance with Article 400(2)(c) of the CRR and regulation 6 of the Regulations

46. For the purposes of regulation 6 of the Regulations and Article 400(2)(c) of the CRR, third countries listed in Annex I to Commission Implementing Decision 2014/908 are deemed to be equivalent.

47. When assessing whether an exposure, referred to in Article 400(2)(c) of the CRR in regulation 6 of the Regulations, meets the conditions for an exemption

from the large exposure limit, the credit institution shall into consideration the following criteria in accordance with Article 400(3) of the CRR:

(a) For the purpose of assessing whether the specific nature of the exposure, the counterparty or the relationship between the credit institution and the counterparty eliminate or reduce the risk of the exposure, as provided for in Article 400(3)(a) of the CRR, credit institutions shall consider whether:

(i) the conditions provided for in Article 113(6)(b), (c) and (e) of the CRR are met and in particular whether the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution and whether the IT systems are integrated or, at least, fully aligned. In addition, they must take into account whether there are any current or anticipated material practical or legal impediments that would hinder the timely repayment of the exposure by the counterparty to the credit institution, other than in the event of a recovery or resolution situation when the restrictions outlined in the Recovery and Resolution Regulations are required to be implemented;

(ii) the intragroup exposures are justified by the group's funding structure and strategy;

(iii) the process by which a decision is made to approve an exposure to the intragroup counterparty, and the monitoring and review process applicable to such exposures, at individual level and at consolidated level, where relevant, are similar to those that are applied to third party lending;

(iv) the credit institution's risk management procedures, IT system and internal reporting enable it to continuously check and ensure that large exposures to group undertakings are aligned with its risk strategy at legal entity level and at consolidated level, where relevant.

(b) For the purpose of assessing whether any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Section 31 of Banking Rule BR/24, as provided for in Article 400(3)(b) of the CRR, credit institutions shall consider whether:

(i) they have robust processes, procedures and controls, at individual level and at consolidated level, where relevant, to ensure that use of the exemption would not result in concentration risk that is outside

their risk strategy and against the principles of sound internal liquidity management within the group;

(ii) they have formally considered the concentration risk arising from intragroup exposures as part of its overall risk assessment framework;

(iii) they have a risk control framework, at legal entity level and at consolidated level where relevant, that adequately monitors the proposed exposures;

(iv) the concentration risk arising has been or will be clearly identified in the internal capital adequacy assessment process (ICAAP) and will be actively managed. The arrangements, processes and mechanisms to manage the concentration risk will be assessed in the SREP;

(v) there is evidence that the management of concentration risk is consistent with the group's recovery plan.

#### 1.6.3.2 Documentation related to approval decisions under Article 400(2)(c) of the CRR for third-country intragroup exposures

48. For the purposes of verifying whether the conditions specified in paragraph 46 and 47 are met, credit institutions shall submit the following documentation:

(a) A letter signed by the credit institution's legal representative, with approval from the board of directors, stating that the credit institution complies with all the conditions for an exemption as laid down in Article 400(2)(c) and Article 400(3) of the CRR.

(b) A legal opinion, issued either by an external independent third party or by an internal legal advisor, and approved by the board of directors, demonstrating that there are no obstacles that would hinder timely repayment of exposures by a counterparty to the credit institution that arise from either applicable regulations, including fiscal regulations, or binding agreements.

(c) A statement signed by the legal representative and approved by the board of directors stating that:

(i) there are no practical impediments that would hinder the timely repayment of exposures by a counterparty to the credit institution;

(ii) intragroup exposures are justified by the group's funding structure and strategy;

(iii) the process by which a decision is made to approve an exposure to an intragroup counterparty and the monitoring and review process applicable to such exposures, at legal entity level and at consolidated level, are similar to those that are applied to third-party lending;

(iv) concentration risk arising from intragroup exposures has been considered as part of the credit institution's overall risk assessment framework.

(d) Documentation signed by the legal representative and approved by the board of directors attesting that the credit institution's risk evaluation, measurement and control procedures are the same as the counterparty's and that the credit institution's risk management procedures, IT system and internal reporting enable the board of directors to continuously monitor the level of the large exposure and its compatibility with the credit institution's risk strategy at legal entity level and at consolidated level, where relevant, and with the principles of sound internal liquidity management within the group.

(e) Documentation showing that the ICAAP clearly identifies the concentration risk arising from the large intragroup exposures and that this risk is actively managed.

(f) Documentation showing that the management of concentration risk is consistent with the group's recovery plan.

49. For the purpose of the assessment(s) under Article 400(2)(c) of the CRR, the credit institution shall also present the following documentation:

a) A description of the legal entity structure of the group, identifying all third-country undertakings to which the applicant credit institution has, or intends to have, exposures which would be covered by the requested exemption, were it to be granted.

b) A statement signed by the legal representative and approved by the board of directors confirming that:

(i) the applicant credit institution is able to provide sufficient regular information on those third-country entities to which it has, or intends to have, exposures that would be exempted from the large exposures limits, if the exemption were to be granted;

(ii) there are no obstacles in the legal framework applicable in the relevant third countries that impede the applicant credit institution from providing relevant information to the Authority;

(iii) the booking practices of the credit institution are aligned with its risk management strategy and risk control mechanisms, at both the individual level and the consolidated level;

(iv) the structure of the part of the group which is located outside the EU does not hinder the timely repayment of the exposure by the counterparty to the credit institution;
(v) there have been no relevant negative precedents with regard to the transfer of funds by the relevant undertakings to the credit institution;
(vi) the credit institution has established, as appropriate, sound collateral management and IPV capabilities to ensure (i) intragroup exposures are independently quantified, (ii) collateral received is of good quality and segregated from other group entities, and (iii) disputes are promptly resolved.

50. Credit institutions shall notify the Authority of any material change in circumstances that would affect fulfilment of the conditions specified in Article 400(3) of the CRR.

### 1.6.4 Other Exemptions

51. Pursuant to regulation 6(1) of the Regulations and without prejudice to the application of regulation 6(2) of the Regulations, the Authority shall fully exempt the exposures listed in Article 400(2)(e) to (l) of the CRR, or in the case of Article 400(2)(i) of the CRR, shall exempt the relevant exposures up to the maximum allowed amount, from the application of Article 395(1) of the CRR, provided that the conditions set out in Article 400(3) of the CRR are fulfilled. The Authority intends to grant such exemptions only after conducting a case-by-case prior assessment and following an application from the credit institution.

## 1.7 Preferential Treatment for Notional Cash Pooling Arrangements

52. Where credit institutions intend to apply the preferential treatment for cash pooling set out in Article 429b(3) of the CRR, they shall notify the Authority accordingly. The notification to the Authority shall include a detailed description of the cash pooling product, including details about the frequency of transfers from the original accounts to the separate single account and a self-assessment of compliance with the conditions of Article 429b(3) of the CRR.

## 1.8 Classification of Subsequent Issuances as Common Equity Tier 1 Instruments

53. For the purposes of Article 26(3) of the CRR, prior and subsequent issuances of capital instruments shall be considered as “substantially the same” if there

have been no changes to the provisions governing the prior issuances[10] which would affect in substance the clauses that are relevant for the Common Equity Tier 1 (CET1) eligibility assessment and granting of the permission.

54. Credit institutions that intend to make use of the notification procedure shall submit the following documents to the Authority at least 20 calendar days in advance of the date of envisaged classification of the instrument as CET1:

    (a) a declaration that (i) no changes of substance have been made to the provisions governing the issuance relevant for the assessment of compliance with Article 28 or 29 of the CRR and Commission Delegated Regulation (EU) No 241/2014; (ii) the instrument is not funded directly or indirectly by the credit institution; and (iii) there are no other arrangements that would alter the economic substance of the instrument, pursuant to Article 79a of the CRR;

    (b) evidence that the instrument is fully paid up;

    (c) a description of the changes made to the provisions governing the previous issuance and a self-assessment of why those changes are not relevant for the assessment of the compliance with Articles 28 or 29 CRR and the relevant delegated regulation;

    (d) a tracked changes version of the provisions governing the issuance which indicates with marks how the provisions governing the current issuance differ from those governing the previous issuance.[11]

55. The Authority is deemed to have been notified when all information and documentation required in terms of this section of the Rule and any other information required by the Authority is submitted by the credit institution. If there are no objections raised by the Authority regarding the condition that the provisions governing the subsequent issuance are substantially the same as those governing the prior issuance within 20 calendar days of receiving the notification, the credit institution may classify the instrument as a CET1 instrument. If objections are raised, the credit institution shall follow the standard prior permission process set out in the first sub-paragraph of Article 26(3) of the CRR.

[10] For capital instruments subject to profit and loss transfer agreements, changes to such agreements also have to be duly considered. The ECB expects that it would be unlikely to consider capital instruments issued against contributions in kind as a subsequent issuance with provisions that are substantially the same as the provisions governing previous issuances for which the institution has already received permission. This is because contributions in kind, contrary to cash contributions, differ from issuance to issuance and, thus, it seems very unlikely that it will be possible to rely on the assessment made for the previous issuance where prior permission was granted.

[11] Where the instrument has not yet been issued, the declaration that the instrument is not funded directly or indirectly by the institution and the proof of evidence that the instrument is fully paid up must be submitted within five working days of the date of issuance.

## 1.9 Calculation of the Trigger of Additional Tier 1 Instruments Issued by Subsidiary Undertakings Established in a Third County

56. For the purposes of Article 54(1)(e) of the CRR, the following shall be satisfied in order for the national law of the third country or the contractual provisions governing the instruments to be considered as equivalent to the requirements set out in such article:

    i. the credit institution provides the Authority with a signed legal opinion of an independent and law firm certifying that the national law of that third country and the contractual provisions are at least equivalent to the requirements of Article 54 of the CRR; and

    ii. the consultation with the EBA, referred to in such Article, confirms the assessment of equivalence.

## 1.10 Reduction of Own Funds: General Prior Permission

57. The general prior permission referred to in regulation 3B of the Regulations shall be granted by the Authority where the conditions set out in the second sub-paragraph of Article 78(1) of the CRR and in the Commission Delegated Regulation (EU) 241/2014 are met. The margin specified in the second sub-paragraph of Article 78(1) shall be determined after an assessment of all of the following factors is conducted:

    i. whether the credit institution taking any of the actions referred to in Article 77(1) of the CRR would continue to exceed, over a three-year horizon, the overall capital requirements[12] set out in the most recent applicable SREP decision by at least the guidance on additional own funds set out in the same SREP decision;

    ii. whether the credit institution taking any of the actions referred to in Article 77(1) of the CRR would continue to exceed, over a three-year horizon, the requirements laid down in the Recovery and Resolution Regulations by at least the margin which the Resolution Authority or the Single Resolution Board, in agreement with the Authority, would consider necessary to fulfil the condition set out in Article 78a of the CRR;

    iii. the impact of the planned reduction on the relevant tier of own funds;

    iv. whether the credit institution taking any of the actions referred to in Article 77(1) of the CRR would continue to exceed, over a three-year horizon, the leverage ratio requirement laid down in Article 92(1)(d) of the CRR, and the additional own funds requirement to address the risk of

[12] The reference to capital supply in excess of the overall capital requirements also implies the excess over the higher tiers of own funds requirements, i.e. also (a) CET1 requirement plus combined buffer requirement (CBR) and (b) Tier 1 requirement plus CBR by the same margin.

excessive leverage set out in the most recent applicable SREP decision by at least the guidance on additional own funds to address the risk of excessive leverage set out in the most recent applicable SREP decision.

58. Where a credit institution submits an application to the Authority to reduce its own funds which does not adhere to the margins set out above, the credit institution may still have its application approved. This is applicable on a case-by-case basis where it is duly justified by well-founded prudential arguments. Where the margin under point (ii) above is not adhered to, the Authority shall seek the opinion of the Resolution Authority or the Single Resolution Board on whether the own funds reduction may jeopardise the fulfilment of the requirements for own funds and eligible liabilities laid down in the Recovery and Resolution Regulations.

59. Where for the purposes of point (i) or (iv) of paragraph 57, the credit institution is not subject to guidance on additional own funds, the margin will be determined on a case-by-case basis having regard to the specific circumstances of such credit institution.

# Part 2 – Options and National Discretions in Commission Delegated Regulation (EU) 2015/61 - Liquidity Coverage Requirement

## 2.1. Diversification of Holdings of Liquid Assets

60. The Authority shall impose restrictions or requirements on credit institutions for the purpose of diversifying their holdings of liquid assets, as specified in Article 8(1) of Commission Delegated Regulation (EU) 2015/61, on a case-by-case basis and possibly implemented via a SREP decision, to be revised annually. Within this context, the Authority shall assess, in each individual case, the concentration thresholds by asset class and shall, in particular, focus on covered bonds referred to in Articles 10(1)(f), 11(1)(c), 11(1)(d) and 12(1)(e) of Commission Delegated Regulation (EU) 2015/61, if on aggregate they represent more than 60% of the total amount of liquid assets net of applicable haircuts.

61. The Authority shall also monitor more generally whether credit institutions have policies and limits in place to ensure that the holdings of liquid assets comprising their liquidity buffer remain appropriately diversified at all times, as required by Article 8(1) of Commission Delegated Regulation (EU) 2015/61.

## 2.2. Management of Liquid Assets

62. In accordance with Article 8(3)(c) of Commission Delegated Regulation (EU) 2015/61, credit institutions may be allowed to combine the approaches provided for in Article 8(3)(a) and (b) of that Regulation, on a consolidated basis or at the level of the liquidity sub-group, where a liquidity waiver has been granted at the individual level in accordance with Article 8 of the CRR. Credit institutions may also be allowed to combine both approaches at individual level, provided that they can explain why the combined approach is needed.

## 2.3 Currency Mismatches

63. The first paragraph of Article 8(6) of Commission Delegated Regulation (EU) 2015/61, according to which credit institutions must ensure that the currency denomination of their liquid assets is consistent with the distribution by currency of their net liquidity outflows, does not require credit institutions to comply with a 100% LCR requirement in relation to the LCR in significant currencies (as defined in Article 415(2) of the CRR). Instead, the Authority shall assess potential mismatches against the factors referred to under Article 8(6) of Commission Delegated Regulation (EU) 2015/61. Moreover, the Authority shall also consider the credit institution-specific contingency plans to resolve currency mismatches during times of idiosyncratic and/or market-wide stress. Based on the above-mentioned assessment, the Authority may then impose a limit on net liquidity outflows addressing currency mismatches in accordance with Article 8(6) of Commission Delegated Regulation (EU) 2015/61 on a case-by-case basis, if deemed necessary.

64. The Authority shall also monitor risks related to currency mismatches more generally by also looking at currency mismatches of assets and liabilities with an effective residual maturity beyond the 30 calendar-day time horizon referred to in the LCR.

## 2.4 Treatment of Central Bank reserves with respect to the LCR

65. For the purposes of Article 10(1)(b)(iii) of the Commission Delegated Regulation (EU) 2015/61, the conditions for the treatment of central bank reserves as Level 1 assets with regard to the LCR shall be the same as those laid out in the common understanding between the ECB and National Competent Authorities dated 30 September 2015. Reference shall be made to the Circular issued by the Authority on 20 October 2015, entitled 'Circular to Credit Institutions on the treatment of central bank reserves with regards to the Liquidity Coverage Requirement (LCR)', wherein reference is made to such common understanding.

## 2.5 Derogation in relation to Level 2B assets

66. Pursuant to Article 12(3) of the Commission Delegated Regulation (EU) 2015/61, credit institutions may be granted the derogation from the conditions laid down in paragraphs b(ii) and b(iii) of Article 12(1)(b) of the Commission Delegated Regulation (EU) 2015/61 with respect to corporate debt securities, to those credit institutions which by virtue of their memorandum and articles of association are unable for reasons of religious observance to hold interest bearing assets. The Authority shall exercise such discretion on a case-by-case basis and subject to the conditions laid down in the Commission Delegated Regulation (EU) 2015/61.

## 2.6 Composition of the liquidity buffer by asset level

67. Pursuant to Article 17(4) of the Commission Delegated Regulation (EU) 2015/61, the Authority shall exercise such discretion in exceptional circumstances subject to the conditions laid down therein. The Authority shall consult with the Central Bank and the ECB as may be appropriate and if it is considered that this will contribute to the mitigation of systematic risks.

## 2.7 Additional Outflows for other products and services

68. With regard to the identification of the products and services to be included under Article 23 of Commission Delegated Regulation (EU) 2015/61, credit institutions shall consider the high-level principles and examples provided by the EBA in the first EBA report on the implementation of the LCR in the EU[13] or any future publications and specifications by the EBA on this matter.

69. Pursuant to Article 23(2) of Commission Delegated Regulation (EU) 2015/61, credit institutions shall provide to the Authority, at least once a year, information on the products and services referred to in Article 23(1) of Commission Delegated Regulation (EU) 2015/61 for which the likelihood and potential volume of such liquidity outflows are material. The Authority shall determine the outflow rates to be applied, either by accepting the outflow rates applied by the credit institutions or by setting the outflow rates itself.

[13] "Monitoring of liquidity coverage ratio implementation in the EU – First report", European Banking Authority, July 2019.

## 2.8 Multiplier for Retail Deposits covered by a Deposit Guarantee Scheme

70. The Authority shall authorise a credit institution to multiply by 3% the amount of deposits covered by a deposit guarantee scheme in a third country at the consolidated level, pursuant to Article 24(6) of Commission Delegated Regulation (EU) 2015/61, provided that:
    (i) the Authority has authorised the credit institution to apply an outflow rate of 3% to stable retail deposits covered by a deposit guarantee scheme in accordance with Directive 2014/49/EU pursuant to Article 24(4) of Commission Delegated Regulation (EU) 2015/61;
    (ii) the third country allows this treatment and the deposit guarantee scheme in the third country has been assessed as equivalent to the schemes listed in Article 24(1) of Commission Delegated Regulation (EU) 2015/61 and meets the conditions listed in Article 24(4)(a) to (c) of Commission Delegated Regulation (EU) 2015/61.

## 2.9 Higher Outflow Rates

71. The Authority shall impose supervisory outflow rates pursuant to Article 25(3) of Commission Delegated Regulation (EU) 2015/61, especially in cases where:

    (i) empirical evidence shows that the actual outflow rate observed for certain retail deposits is higher than those set out in that Regulation for riskier retail deposits;

    (ii) certain credit institutions develop aggressive marketing policies, for example, in the form of offering remuneration rates significantly above the average, that present a risk for their liquidity position, as well as a systemic risk, in particular to the extent that they can trigger a change in market practices regarding riskier forms of deposits.

## 2.10 Outflows with interdependent inflows

### 2.10.1 General considerations

72. Credit institutions with interdependent inflows shall be allowed to calculate the corresponding outflows net of the interdependent inflows pursuant to Article 26 of Commission Delegated Regulation (EU) 2015/61, provided that the applicant credit institution provides evidence that the following criteria, which specify the conditions set out in Article 26 of Commission Delegated Regulation (EU) 2015/61, are met:

a. Regarding Article 26(a) of Commission Delegated Regulation (EU) 2015/61, interdependent inflows and outflows shall not be subject to a judgement or discretionary decision of the reporting credit institution;

b. Regarding Article 26(a) of Commission Delegated Regulation (EU) 2015/61, the interdependent inflow shall not be captured otherwise in the LCR of the credit institution, in order to avoid double-counting;

c. Evidence of the legal, regulatory or contractual commitment as required by Article 26(b) of Commission Delegated Regulation (EU) 2015/61 shall be provided by the credit institution;

d. When Article 26(c)(i) of Commission Delegated Regulation (EU) 2015/61 applies, the credit institution shall consider the following:

    (i) due consideration shall be given to delays in payment systems that could prevent the condition in Article 26(c)(i) of Commission Delegated Regulation (EU) 2015/61 from being met;

    (ii) in the event of a time lag between the inflow and the outflow, the funds from the inflow shall be segregated and held in the form of assets referred to in Chapter 2 of Title II of Commission Delegated Regulation (EU) 2015/61 and, if the inflow arises before the reporting reference date of the LCR, it shall not be considered anywhere else in the calculation of the LCR.

e. When Article 26(c)(ii) of Commission Delegated Regulation (EU) 2015/61 applies, the State guarantee, as well as the timing of the inflows, is clearly defined in the applicable legal, regulatory or contractual framework. Existing payment practices are not considered to be sufficient to fulfil this condition. Due consideration shall also be given to delays in payment systems regarding interdependent inflows and outflows pursuant to Article 26(c)(ii) of Commission Delegated Regulation (EU) 2015/61.

73. For the purpose of the assessment of compliance with the specifications above, as well as the Authority's notification to the EBA referred to in the last paragraph of Article 26 of Commission Delegated Regulation (EU) 2015/61, the applicant credit institution is also expected to submit to the Authority ex ante information about (i) the outstanding balance of assets, liabilities and off-balance-sheet commitments whose liquidity flows would be treated as interdependent, and (ii) the impact on the net liquidity outflows and the LCR if the Authority were to allow the credit institution to apply the preferential treatment.

### 2.10.2. Specific considerations when applying Article 26 of Commission Delegated Regulation (EU) 2015/61 to debit and credit balances related to accounts that are subject to a notional cash pooling agreement

74. Where the conditions under sub-paragraphs (a) to (e) of paragraph 72 above are met, the credit institutions shall be allowed to apply Article 26 of Commission Delegated Regulation (EU) 2015/61 to debit and credit balances of accounts that are subject to a notional cash pooling agreement, i.e. to net the amount of credit balances that is virtually offset by debit balances, provided that the following additional conditions are met:

    a. The accounts associated with the cash pool are maintained in the same individual applicant credit institution or, where applicable, in the same applicant liquidity sub-group as per Article 8 of the CRR.

    b. The cash pooling arrangement meets the conditions referred to in Article 429b(3) of the CRR.

    c. There are contractual arrangements in place which ensure that the overall net balance of the pool cannot become negative, except to the extent arising from the use of any overdraft facility attached to the cash pool.

    d. The credit institution can demonstrate that it has the operational capacity to transfer the debit and credit balances of all the parties to any individual cash pooling arrangement into a separate single account at any time.

    e. None of the clients that have access to the cash pool qualify as a credit institution referred to in Article 4(1)(1) of the CRR.

75. The Authority shall exclude from the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 balances denominated in currencies where there are or might be obstacles to convertibility.

76. If the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 in relation to a cash pooling arrangement is approved, the credit institution shall consider the following aspects:

    a. The netting shall only be applied to the current debit and credit balances of the individual accounts which are subject to the notional cash pooling arrangement. By contrast, any undrawn overdraft facility attached to the cash pool or to the individual accounts associated with the cash pool should be treated separately, i.e. for the undrawn amount of these facilities, the credit institution should consider an outflow in accordance with Articles 23 or 31 of Commission Delegated Regulation (EU) 2015/61.

    b. Any excess debit or credit balance shall still be considered in the calculation of the LCR and shall be calculated by assuming that debit or credit balances are netted in order of increasing outflow rates and/or decreasing inflow rates.

c. If the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 is approved in relation to a cash pooling arrangement involving accounts denominated in multiple currencies, credit institutions shall continue treating balances denominated in different currencies on a gross basis for the purpose of reporting in a currency subject to separate reporting in accordance with Article 415(2) of the CRR.

d. Where a credit institution or a liquidity sub-group with an EU parent institution in the euro area benefits from the application of Article 26 of Commission Delegated Regulation (EU) 2015/61 in relation to a cash pooling arrangement, any netting approved at individual or liquidity sub-group-level shall also be reflected in the calculation of the LCR at the consolidated level.

## 2.11 Preferential Treatment within a group on an IPS

### 2.11.1 General conditions

77. Pursuant to Article 422 of the CRR and Article 29 of Commission Delegated Regulation (EU) 2015/61, the Authority may apply differentiated treatment to intragroup outflows of credit institutions on a case-by-case basis. More specifically, such treatment can be applied for outflows of credit and liquidity facilities only under Article 29 of Commission Delegated Regulation (EU) 2015/61, in cases where waivers of Article 8 or 10 of the CRR were not granted or were partially granted. This applies both for credit institutions established within the same Member State and for credit institutions established in different Member States.

78. For the purpose of the assessment pursuant to Article 422(8) of the CRR and Article 29(1) of Commission Delegated Regulation (EU) 2015/61 with regard to credit institutions established in the same Member State, the satisfaction of the following criteria, which specify the conditions of the applicable legal framework, shall be assessed:

a. in order to assess whether there are reasons to expect a lower outflow over the next 30 calendar days even under a combined idiosyncratic and market-wide stress scenario, credit institutions shall demonstrate that cancellation clauses for the contract include a notification period of at least six months;

b. when a lower outflow rate applies to credit or liquidity facilities, in order to assess whether a corresponding symmetric or more conservative inflow is applied by the facility receiver, the facility-receiving credit institutions shall demonstrate that the inflow that could potentially arise from the relevant facility is properly taken into account in its contingency funding plan;

c. in the event of the application of Article 422(8) of the CRR, when a lower outflow rate applies to deposits, in order to assess whether a

corresponding symmetric or more conservative inflow is applied by the depositor, the liquidity-providing entity shall demonstrate that the corresponding deposits are not taken into account in its liquidity recovery plan, for the purpose of applying Article 422 of the CRR.

### 2.11.2 Additional conditions in the case of an application where the counterparty is located in a different Member State from the applicant credit institution

79. For the purpose of this assessment pursuant to Article 422(9) of the CRR and Articles 29(1) and (2) of Commission Delegated Regulation (EU) 2015/61 with regard to credit institutions established in different Member States, consideration shall be made of whether the criteria provided under Commission Delegated Regulation (EU) 2017/1230[14], which specify the conditions of the legislative framework, are met.

## 2.12 Additional Collateral Outflows from downgrade triggers

80. With reference to Article 30(2) of Commission Delegated Regulation (EU) 2015/61, credit institutions shall calculate the amount of collateral that would be posted for, or contractual cash outflows associated with, contracts with respect to which contractual conditions will lead to outflows within 30 calendar days in the case of a downgrade in the credit institution's external credit assessment by three notches. When credit institutions do not have an external credit assessment, they shall consider the impact on their liquidity outflows of a material deterioration of their credit quality corresponding to a three-notch downgrade. Where the above amount represents at least 1% of gross liquidity outflows such outflows shall be included in the regular supervisory reporting in accordance with Article 415 of the CRR. For the purpose of this specification, gross liquidity outflows shall be understood as total liquidity outflows referred to in Article 22 of Delegated Regulation (EU) 2015/61, including those additional outflows triggered by the abovementioned deterioration in credit quality.

## 2.13 Cap on Inflows

81. Under certain conditions, the exercise of the specific option on liquidity requirements laid out in Article 33(1) of Commission Delegated Regulation (EU)

[14] Delegated Regulation (EU) 2017/1230 of 31 May 2017 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the additional objective criteria for the application of a preferential liquidity outflow or inflow rate for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme (OJ L 177, 8.7.2017, p. 7).

2015/61, when considered in combination with the option in Article 34 of Commission Delegated Regulation (EU) 2015/61, could, from the liquidity-receiving entity's perspective, produce a comparable effect to a waiver under Regulation 2C of the Regulations (i.e. where, in the case that the above-mentioned options are combined, the liquidity buffer requirement for the exempted credit institution is reduced to zero, or close to zero), while the two exemptions are subject to different specifications.

82. Consequently, in exercising the combination of those options and granting the related waivers, the Authority will ensure that this does not create any inconsistencies or conflicts with the Authority's policy for granting a waiver in accordance with regulation 2C of the Regulations concerning the same entities within the same perimeter.

83. Details on the combination of the Article 33(2) exemption and the Article 34 waiver and their interaction with a waiver under regulation 2C of the Regulations are provided below in the specifications for the assessment of the inflows referred to in sub-paragraph (a) of Article 33(2).

84. In general, the cap on inflows set out in Article 33(1) of Commission Delegated Regulation (EU) 2015/61 may be fully or partially waived following a specific assessment of the applications submitted by credit institutions pursuant to Article 33(2) of the same Regulation. This assessment shall be carried out according to the factors specified below for each type of exposure.

### 2.13.1 Assessment for granting the exemption from the cap on inflows under Article 33(2)(a) of Commission Delegated Regulation (EU) 2015/61

85. The provision captures inflows where the provider is a parent or subsidiary of the credit institution 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. In this context, 'parent' shall be understood as a 'parent undertaking', as defined in article 2(1) of the Act, and 'subsidiary' should be understood as defined in article 2(1) of the Act.

86. Both entities shall also belong to the same scope of consolidation as defined in Article 18(1) of the CRR, unless they have a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.

87. Only those credit institutions which currently have inflows exceeding 75% of their gross outflows, or which reasonably expect to have inflows exceeding 75% of their gross outflows in the foreseeable future, also taking into consideration the potential volatility of the LCR, shall be exempted.

88. Particular attention shall be paid to cases where this option is exercised in combination with the option set out in Article 34 of Commission Delegated

Regulation (EU) 2015/61, when a preferential treatment on intragroup credit and liquidity facilities has been granted.

Exercising these two options in combination could result in zero net liquidity outflows for the liquidity-receiving entity. It could, therefore, under certain conditions, have an effect for the liquidity-receiving entity that is comparable to a waiver in accordance with regulation 2C of the Regulations. In this regard, the granting of applications for a combination of these two options or for the exemption under Article 33(2)(a) of Commission Delegated Regulation (EU) 2015/61 in isolation shall not conflict with the approved policy for applications for a waiver, under regulation 2C of the Regulations, which would cover the same entities.

In cases where the conditions for a waiver in accordance with regulation 2C of the Regulations cannot be met for reasons that are not under the control of the credit institution or the group, or where the Authority is not satisfied that a waiver in accordance with regulation 2C of the Regulations may actually be granted, the possibility of granting a combination of the preferential treatment under Article 34 of Commission Delegated Regulation (EU) 2015/61 and the exemption from the cap on inflows pursuant to Article 33(2)(a) of Commission Delegated Regulation (EU) 2015/61 shall be considered by the Authority.

89. The Authority considers it appropriate, in cases where applications are submitted jointly pursuant to Articles 33(2)(a) and 34 of Commission Delegated Regulation (EU) 2015/61 for the same inflows, that the assessment regarding inflows from undrawn credit and liquidity facilities is carried out according to the specifications under Article 34 of Commission Delegated Regulation (EU) 2015/61 in order to ensure consistency.

Where the exemption under Article 33(2) of Commission Delegated Regulation(EU) 2015/61 is not requested in combination with a preferential treatment pursuant to Article 34 of the same Regulation, consideration shall be given to the potential impact of this exemption on the LCR of the credit institution and its liquidity buffer, and the type of intragroup inflows that would be exempted from the cap on inflows. In particular, under certain conditions, granting this exemption in isolation could have a similar impact to a waiver granted in accordance with regulation 2C of the Regulations for the credit institution exempted from the cap on inflows.

The inflows in question shall, therefore, meet minimum characteristics that would give sufficient comfort that the applicant credit institution could rely on the inflows for its liquidity needs in times of stress. To this end, the inflows should present the following features:

(i) There are no contractual clauses that require any specific conditions to be met for the inflow to become available.

(ii) There are no provisions that would allow the intragroup counterparty providing the inflows to withdraw from its contractual obligations or impose additional conditions.

(iii) The terms of the contractual agreement giving rise to the inflows cannot be changed substantially without the prior approval of the Authority. An extension or a renewal of contracts under the same provisions as previous contracts does not per se require prior approval. Nonetheless, credit institutions shall notify to the Authority extensions or renewals of contracts.

(iv) The inflows are subject to a symmetric or more conservative outflow rate when the intragroup counterparty calculates its own LCR. In particular, for intragroup deposits, if the deposit-receiving credit institution applies an inflow rate of 100%, the applicant entity should demonstrate that the intragroup counterparty does not treat this deposit as operational (as defined in Article 27 of Commission Delegated Regulation (EU) 2015/61).

(v) The applicant credit institution shall demonstrate that the inflows are also properly captured in the contingency funding plan of the intragroup counterparty or, in the absence of such contingency funding plan, in the contingency funding plan for the applicant entity.

(vi) The applicant credit institution shall demonstrate that the intragroup counterparty has been fulfilling the LCR requirement for at least one year.

(vii) The applicant credit institution shall monitor the liquidity position of the intragroup counterparty on a regular basis and demonstrate that it also enables the intragroup counterparty to monitor its own liquidity position on a regular basis. Alternatively, the applicant credit institution shall demonstrate how it has access to the appropriate information on the liquidity positions of the intragroup counterparty.

(viii) The applicant credit institution shall factor in the impact of granting the exemption on its risk management systems with a view to complying with Article 86 of the CRD and shall monitor how a potential withdrawal of the exemption would affect its liquidity risk position and LCR.

### 2.13.2 Assessment for granting the exemption from the cap on inflows under Article 33(2)(b) of Commission Delegated Regulation (EU) 2015/61

90. Regard must be had to the fact that for members of IPSs, this exemption could, under certain circumstances, be functionally equivalent, for the depositing entity (depositor) member of the IPS, to the deposit being treated in accordance with Article 16(1)(a) of Commission Delegated Regulation (EU) 2015/61 as a Level 1 liquid asset. Even if the treatment under Article 16(1)(a) concerns the LCR numerator, allowing an exemption from the cap on inflows pursuant to Article 33(2)(b) for the deposit would, through the offsetting of outflows by inflows, decrease the denominator of the same ratio to a corresponding degree. This would ultimately produce an equivalent effect to the same deposit being recognised in full as high quality liquid assets and would increase the numerator. Consequently, the exemption from the cap on inflows shall not be

exercised for deposits from entities (members of IPSs) qualifying for the treatment set out in Article 113(7) of the CRR that are fully eligible for the treatment pursuant to Article 16(1)(a) of Commission Delegated Regulation (EU) 2015/61.

91. In cases referred to in paragraph 90, credit institutions shall directly apply the treatment set out in Article 16(1)(a) of Commission Delegated Regulation (EU) 2015/61 for the determination of the LCR.

92. Other deposits that do not qualify for the treatment under Article 16(1)(a) of Commission Delegated Regulation (EU) 2015/61 may benefit from the exemption only in the following cases:

    a. where, in accordance with national law or the legally binding provisions, the deposit-receiving entity is obliged to hold or invest the deposits in Level 1 liquid assets as defined in letters (a) to (d) of Article 10(1) of Commission Delegated Regulation (EU) 2015/61;

    or

    b. where the following conditions are met:

        (i) There are no contractual clauses that require any specific conditions to be met for the inflow to become available.

        (ii) There are no provisions that would allow the intra-IPS counterparty to not fulfil its contractual obligations or to impose additional conditions on the withdrawal of the deposit.

        (iii) The terms of the contractual agreement governing the deposit cannot be changed substantially without the prior approval of the ECB.

        (iv) The inflows are subject to a symmetric or more conservative outflow rate when the intra-IPS counterparty calculates its own LCR. In particular, if the deposit-receiving credit institution applies an inflow rate of 100%, the applicant entity should demonstrate that the intra-IPS counterparty does not treat this deposit as operational (as defined in Article 27 of Commission Delegated Regulation (EU) 2015/61).

        (v) The inflows are also properly captured in the contingency funding plan of the intra-IPS counterparty.

        (vi) The applicant credit institution is able to demonstrate that the intra-IPS counterparty has been fulfilling the LCR requirement for at least one year.

        (vii) The IPS adequately monitors and reviews the liquidity risk and communicates the review to individual members in terms of its systems in accordance with Article 113(7)(c) and (d) of the CRR.

(viii) The applicant credit institution is able to incorporate the impact of granting the exemption in its risk management systems and monitor how a potential withdrawal of the exemption would affect its liquidity risk position and its LCR.

93. The legislative wording used for the other category of deposits eligible for exemption from the cap, namely groups of entities qualifying for the treatment set out in Article 113(6) of the CRR, means that the conditions mentioned in Article 113(6) of the CRR must have been met and the corresponding exemption from risk-weighted capital requirements for intragroup exposures must actually have been granted. Therefore, entities that have been excluded from the scope of prudential consolidation in accordance with Article 19 of the CRR shall also be excluded from the application of the exemption on the cap on inflows, given that an exemption referred to under Article 113(6) of the CRR cannot be granted. Consequently, the exemption from the cap on inflows under Article 33(2)(b) of Commission Delegated Regulation (EU) 2015/61 is not allowed either.

94. In this case, other intragroup deposits could benefit from the exemption only where, in accordance with national law or other legally binding provisions regulating groups of credit institutions, the deposit-receiving entity is obliged to hold or invest the deposits in Level 1 high quality liquid assets as defined in letters (a) to (d) of Article 10(1) of Commission Delegated Regulation (EU) 2015/61.

### 2.13.3 Assessment for granting the exemption from the cap on inflows under Article 33(2)(c) of Commission Delegated Regulation (EU) 2015/61

95. The inflows already benefiting from the preferential treatment mentioned in Article 26 of Commission Delegated Regulation (EU) 2015/61 shall also be exempted from the cap referred to in Article 33(1) of Commission Delegated Regulation (EU) 2015/61.

96. In order for the exemption for the inflows referred to in the second sub-paragraph of Article 31(9) of Commission Delegated Regulation (EU) 2015/61 to be granted, an assesses is made of such inflows against the definition of promotional loans in Article 31(9) of Commission Delegated Regulation (EU) 2015/61, and against the criteria of Article 26 of Commission Delegated Regulation (EU) 2015/61.

## 2.14 Specialised Credit Institutions

97. Specialised credit institutions shall have differentiated treatment for the recognition of their inflows under the conditions specified in Article 33(3) to (5) of Commission Delegated Regulation (EU) 2015/61.

98. More specifically:

    (i) credit institutions whose main activities are leasing and factoring can be fully exempted from the cap on inflows;

    (ii) credit institutions whose main activities are financing for the acquisition of motor vehicles and consumer credit as defined in the Consumer Credit Regulations (S.L. 378.12) may apply a higher cap of 90% on inflows.

99. Preferential treatment shall only be applied to credit institutions with a business model that fully corresponds to one or several of the activities identified in Article 33(3) and (4) of Commission Delegated Regulation (EU) 2015/61.

100. For the purpose of this assessment, an examination of whether the business activities exhibit a low liquidity risk profile shall be made, taking into account the following factors:

    a. The timing of inflows shall match the timing of outflows. More specifically, an examination of whether the following apply shall be made:

        (i) Inflows and outflows subject to the cap exemption or to a 90% cap are triggered by a single decision or set of decisions by a given number of counterparties and are not subject to a judgement or discretionary decision of the reporting credit institution.

        (ii) Inflows and outflows subject to the exemption are related to a legal, regulatory or contractual commitment. Credit institutions shall submit evidence of this commitment. In the event that the exempted inflow arises from a contractual commitment, the credit institution is shall demonstrate that this commitment has a residual validity exceeding 30 days. Alternatively, when the business activity does not make it possible to show a relationship between inflows and outflows on a transaction-by-transaction basis, the applicant credit institutions shall provide maturity ladders showing the respective timing of inflows and outflows over a period of 30 days for a total period covering at least one year.

    b. At the individual level, the credit institution is not significantly financed by retail deposits. More specifically, an examination of whether deposits from retail depositors exceed 5% of its total liabilities, and whether at the individual level the ratio of the main activities of the credit institution exceeds 80% of the total balance sheet, shall be made. In cases where at the individual level credit institutions have diversified business activities which include one or several of the activities identified in Article 33(3) or (4) of Commission Delegated Regulation (EU) 2015/61, only inflows corresponding to activities under Article 33(4) are considered to be subject to the 90% cap. Within this context, an examination of whether the credit institution's activities under Article 33(3) and (4), jointly examined, exceed 80% of the total balance sheet of the credit institution at the individual level shall also be made. The credit institution shall demonstrate that it has an

appropriate reporting system to precisely identify these inflows and outflows on a continuous basis.

c. The derogations are disclosed in annual reports.

d. In addition, an examination of whether, at the consolidated level, inflows exempt from the cap are higher than outflows arising from the same specialised lending credit institution and cannot cover any other types of outflows, shall be made.

## 2.15 Intragroup Liquidity Inflows

### 2.15.1 General conditions

101. Differentiated treatment with regard to inflows within a group may also be allowed under the conditions set out in Article 425 of the CRR and Article 34 of Commission Delegated Regulation (EU) 2015/61, on a case-by-case basis. This approach shall be considered for inflows of credit and liquidity facilities, in cases where waivers of regulation 2C of the Regulations or Article 10 of the CRR were not granted or were partially granted, with regard to the LCR. This policy applies both for credit institutions established within the same Member State and for credit institutions established in different Member States.

102. For the purpose of this assessment pursuant to Article 425(4) of the CRR and Article 34(1) of Commission Delegated Regulation (EU) 2015/61, with regard to credit institutions established in the same Member State, consideration shall be made of whether the following criteria, which specify the conditions of the legislative framework, are met:

(i) In order to assess whether there are reasons to expect a higher inflow even under a combined idiosyncratic and market-wide stress scenario, the credit institution shall demonstrate to the Authority that the cancellation clauses include a notification period of at least six months and that the agreements and commitments do not contain any clause that would allow the liquidity provider to:

a. require any conditions to be fulfilled before the liquidity is provided;

b. withdraw from its obligations to fulfil these agreements and commitments;

c. change substantially the terms of the agreements and commitments without prior approval from the competent authorities involved.

(ii) In order to assess whether a corresponding symmetric or more conservative outflow is applied by the counterparty by way of derogation from Articles 422, 423 and 424 of the CRR, the credit institution shall demonstrate to the Authority that the corresponding outflows from the credit or liquidity

facility are taken into account in the liquidity recovery plan of the liquidity-providing entity.

(iii) In order to assess whether the liquidity-providing entity exhibits a sound liquidity profile, the credit institution shall demonstrate that it has been fulfilling its LCR on an individual and a consolidated basis, when applicable, for at least one year. The liquidity-receiving credit institution shall reflect the impact of the preferential treatment and of any exemption granted under Article 33 of Commission Delegated Regulation (EU) 2015/61 in its calculation of the LCR.

### 2.15.2 Additional conditions in the case of an application where the counterparty is located in a different Member State than the applicant credit institution

103. For the purpose of this assessment pursuant to Article 425(5) of the CRR and Article 34(1) to (3) of Commission Delegated Regulation (EU) 2015/61, with regard to credit institutions established in different Member States, consideration shall be given to whether the criteria provided for in Commission Delegated Regulation (EU) 2017/1230[15], which specify the conditions of the legislative framework, are met.

[15] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

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