

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/786

of 10 February 2022

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular Article 460 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/61 ⁽²⁾ should be amended to better allow the credit institutions issuing covered bonds to comply, on the one hand, with the general liquidity coverage requirement for a 30 calendar day stress period, laid down in Article 4(1) of that Delegated Regulation, and on the other hand, with the cover pool liquidity buffer requirement of holding liquid assets to cover net liquidity outflows over the next 180 days, laid down in Article 16 of Directive (EU) 2019/2162 of the European Parliament and of the Council ⁽³⁾. In order to clarify some of the existing rules and to align the text of Delegated Regulation (EU) 2015/61 with the definitions laid down in Regulation (EU) No 575/2013 and in Directive (EU) 2019/2162, some additional changes have proven necessary.
- (2) The general liquidity coverage requirement laid down in Article 4(1) of Delegated Regulation (EU) 2015/61 and the cover pool liquidity buffer requirement laid down in Article 16 of Directive (EU) 2019/2162 result in an obligation for credit institutions issuing covered bonds to hold a certain amount of liquid assets for the same period of 30 calendar days. However, credit institutions should not have an obligation to cover the same outflows with different liquid assets for the same period. To address that overlap, a new amendment to the encumbrance criterion under the general liquidity coverage requirement should be introduced. This amendment, together with the provisions already in place in the Article 7 of Delegated Regulation (EU) 2015/61 and still applicable in the case of cover pool segregated assets, would address situations where segregated assets are fulfilling the criteria to be recognised as unencumbered in a prudentially sound way. This new amendment would treat liquid assets held as part of the cover pool liquidity buffer as unencumbered up to the amount of net liquidity outflows stemming from the associated covered bond programme.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

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

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

- (3) In addition, specific models of covered bond issuance apply in some Member States, characterised by specific legal requirements imposed to covered bonds issuers to protect investors and going beyond those listed in the Directive (EU) 2019/2162. Those covered bonds issuers that are subject to such specific legal requirements carry out similar covered bonds issuances activities than other cover bonds issuers in the EU, and as a consequence have a similar liquidity risk profile. They also provide a high degree of protection to covered bonds issuers notably via the recourse to non-mandatory overcollateralisation for the issuance of their covered bond programmes. However, all the assets of these covered bond issuers would be attached to cover pools and therefore considered encumbered, making them unavailable and ineligible for the purpose of the liquidity coverage ratio (LCR) liquidity buffer. That situation would make those covered bonds issuers breaching their LCR requirement laid down in Regulation (EU) No 575/2013 and Delegated Regulation (EU) 2015/61 and thus create an uneven playing field between issuers despite the similarity of their prudential profile. In order to meet mandatory and non-mandatory overcollateralisation requirements for the purpose of the issuance of a covered bond programme, those covered bonds issuers are operationally constrained to issue junior debt. The general net liquidity outflow of those issuers is higher than the net liquidity outflow stemming from the sole covered bonds issued. In this context, additional amendments should be introduced to allow in some specific and limited situations to recognise as unencumbered the assets held in the cover pool in order to meet non-mandatory overcollateralisation requirements. In order to ensure that such an extension of the recognition of assets held in a cover pool as unencumbered is prudentially sound and consistent with the LCR requirements, covered bond issuers should fulfil several conditions. In particular, only covered bond issuers which are obliged by the virtue of a legal requirement of national law to attach all their assets to covered bonds issuances can benefit from that provision, up to the volume of assets necessary to meet the total net liquidity outflow of the covered bonds issuer.
- (4) Moreover, it is necessary to lay down monetisation rules for the assessment of liquid assets held in a cover pool liquidity buffer.
- (5) Taking into account the recommendations made by the European Banking Authority (EBA) in its report of 20 December 2013 ⁽⁴⁾, prepared pursuant to Article 509(3) and (5) of Regulation (EU) No 575/2013, all types of bonds issued or guaranteed by Member States' central governments and central banks as well as those issued or guaranteed by multilateral development banks and international organisations should be given level 1 status. In the EBA report an empirical and qualitative analysis regarding the high or extremely high liquidity and credit quality of such bonds has been performed and the report concludes that those bonds fulfil Basel standards in terms of high liquidity and credit quality. Therefore, bonds issued by official export credit agencies, irrespective of those agencies' organisational structure, should be qualified as 'liquid assets' and consequently given level 1 status.
- (6) Some of the conditions for preferential treatment of exposures in the form of covered bonds laid down in Article 129 of Regulation (EU) No 575/2013 have been amended by Regulation (EU) 2019/2160 of the European Parliament and of the Council ⁽⁵⁾. References to that Article in Delegated Regulation (EU) 2015/61 should therefore be amended accordingly.
- (7) Delegated Regulation (EU) 2015/61 should therefore be amended accordingly.
- (8) This Regulation should be applied in conjunction with the provisions of national law transposing Directive (EU) 2019/2162 and with Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/2160. In order to ensure the consistent application of the new framework establishing the structural features for the issue of covered bonds and the amended requirements for preferential treatment, the date of application of this Regulation should be the same as the date from which Member States are to apply the provisions of national law transposing Directive (EU) 2019/2162, and as the date of application of Regulation (EU) 2019/2160,

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 3, the following points (13) to (16) are added:

- (13) “capital market-driven transaction” means a capital market-driven transaction as defined in Article 192, point (3), of Regulation (EU) No 575/2013;
- (14) “covered bond programme” means a covered bond programme as defined in Article 3, point (2), of Directive (EU) 2019/2162 of the European Parliament and of the Council (*);
- (15) “cover pool” means a cover pool as defined in Article 3, point (3), of Directive (EU) 2019/2162;
- (16) “cover pool liquidity buffer” means the liquidity buffer composed of assets considered as liquid and held as part of the cover pool, in accordance with Article 16 of Directive (EU) 2019/2162.

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

(2) Article 7 is amended as follows:

(a) the following paragraphs 2a and 2b are inserted:

‘2a. By way of derogation from paragraph 2, liquid assets that are held as part of the cover pool liquidity buffer shall be deemed to be unencumbered during the 30 calendar day stress period, laid down in Article 4, up to the amount of net liquidity outflows as calculated under Title III of this Regulation, which result from the associated covered bond programmes, provided that those assets meet all other requirements laid down in Title II of this Regulation.

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

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

(b) paragraph 4 is amended as follows:

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

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

(ii) the following second subparagraph is added:

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

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

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

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

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

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

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

(b) point (iii) is deleted;

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

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

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

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

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

(ii) point (iii) is deleted;

(b) in point (d), points (iii), (iv) and (v) are replaced by the following:

‘(iii) the covered bonds are backed by a pool of assets of one or more of the types described in Article 129(1), points (b), (d), (f) and (g), of Regulation (EU) No 575/2013. Where the pool comprises loans secured by immovable property, the requirements set out in Article 6(2), Article 6(3), point (a), and in Article 6(5) of Directive (EU) 2019/2162 must be met;

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

(v) the credit institution investing in the covered bonds and the issuer meet the transparency requirement laid down in Article 14 of Directive (EU) 2019/2162;’;

(6) in Article 12(1), point (e) is amended as follows:

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

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

(b) points (ii) and (iii) are deleted;

(7) in Article 28, paragraph 3 is amended as follows:

(a) in the first subparagraph, the introductory wording is replaced by the following:

‘Credit institutions shall multiply liabilities maturing within 30 calendar days and resulting from securities financing transactions or capital market-driven transactions by:’;

(b) in the second subparagraph, the first sentence is replaced by the following:

‘By way of derogation from the first subparagraph, where the counterparty to the securities financing transactions or capital market-driven transaction is the domestic central bank of the credit institution, the outflow rate shall be 0 %.’;

(c) the third subparagraph is replaced by the following:

‘By way of derogation from the first subparagraph, for securities financing transactions or capital market-driven transactions that would require an outflow rate under that subparagraph higher than 25 %, the outflow rate shall be 25 % where the counterparty to the transaction is an eligible counterparty.’;

(8) Article 32 is amended as follows:

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

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

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

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

Article 2

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

It shall apply from 8 July 2022.

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

Done at Brussels, 10 February 2022.

For the Commission
The President
Ursula VON DER LEYEN
