bankenverband

Comments

of the Association of German Banks on EBA/CP/2015/22 (Consultation on RTS on criteria for a preferential treatment in cross-border intragroup financial support under LCR)

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The Bundesverband deutscher Banken e. V. (Association of German Banks), founded in Cologne in 1951, is the voice of the private banks in Germany. It represents more than 200 private banks and 11 regional member associations.

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General comments

We wish to thank the EBA for the opportunity to comment on the present *Draft Regulatory Technical Standards on the specification of the additional objective criteria referred to in Articles 29 (2) and 34 (2) of Commission Delegated Regulation (EU) No 2015/61 [the delegated act specifying the liquidity coverage ratio for credit institutions, pursuant to Article 460 of Regulation (EU) No 575/2013] under Article 422 (10) and 425(6) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)*.

In principle, the EU – and to an even greater extent the euro area – should be seen as a single jurisdiction. This is the declared aim of the Single Rulebook. There is therefore actually no reason why cross-border groups operating within the euro area should be subject to tougher rules than those operating within a member state. On completion of the Banking Union at the very latest, no difference should be made any longer in this respect.

In addition, we believe that the rules as a whole are bureaucratic, complex and thus costly to implement. This could result in banks opting not to manage liquidity risk centrally, although this actually makes sense and is what supervisors want.

When it comes to the timing of application, we assume that, even if the preferential treatment is not necessary where a waiver has been granted in accordance with Article 8 of the CRR, a bank may seek to obtain the preferential treatment at any time, also if an Article 8 waiver has not yet been granted or applied for (the recent ECB consultation document on discretions and options stipulates – inexplicably, in our view – that the preferential treatment can only be applied for after (partial) refusal of an Article 8 CRR waiver).

Detailed comments

Question 1: Do respondents agree with the specifications of the criterion relating to the low liquidity risk profile? If not, what alternatives would you suggest to assess the liquidity risk profile of the liquidity receiver and provider?

SREP as criterion

A "low liquidity risk profile" according to the latest SREP is a broad and ambiguous term.

The RTS should, in principle, define objective criteria. "Objective" also means, in our view, that such criteria should be verifiable by banks. Since, however, the SREP liquidity score is, to our knowledge, not notified to banks, such objective verification is impossible. This would, moreover, have to mean assigning SREP scores at individual bank level, which is likewise not the case, as far as we know. It should at least be ensured that, before applying for the preferential treatment, banks know whether the SREP criterion is fulfilled.

Overall, the criterion for high SREP scores lacks transparency and is subject to a high degree of supervisory judgement. As there is no plausible way that the competent authority can guarantee consistent outcomes, such a measure should not be used as the basis for granting waivers. In the event that it is used after all, it should at least be made clear whether there is a minimum score and whether this is based on purely quantitative SREP data or whether, when granting the preferential treatment, a "constrained judgement" is also taken into account.

Besides these fundamental considerations on the use of the SREP score, the SREP score should not be used as a criterion for the receiving entity. This is quite consistent with the wording of Article 29 (2) and Article 34 (2) (a) of the Delegated Act, as the intended aim is for the liquidity receiver, together with the liquidity provider, to present a low liquidity risk profile. There is no need for a minimum SREP score at individual institution level for this purpose.

The same goes, in principle, for the LCR compliance criterion for the receiving entity, so that it could be dispensed with. As an alternative, we suggest the following approach:

Calculation of the LCR for provider and receiver
We welcome it, and believe that it is in principle right, that the LCR will be calculated "*under the assumption that the preferential treatment has already been applied*" (Article 2 (a)). However, we should like it to be made clear that if the liquidity receiver already complies with the LCR without the preferential treatment, the LCR does not need to be calculated a second time on the basis of a hypothetically granted preferential treatment.

Instead of calculation of the LCR a second time, it should also be possible to demonstrate by other means to the competent authority that the preferential treatment would enable the liquidity receiver to comply with the LCR (e.g. if, without the preferential treatment for the liquidity receiver, the LCR is already very close to the required compliance figure).

Question 2: Do respondents agree with the specifications of the criterion relating to binding agreements and commitments?

Maturity date
We do not see why a maturity should not be agreed if the provider and the receiver ensure that consideration of such liquidity line in the liquidity risk framework of the provider and receiver is compliant with any maturity date agreed on.

Legal opinions
The requirement to draw on external legal opinions should be removed. The involvement of an external third party is overly burdensome and expensive, which could lead to banks preferring not to apply for the preferential treatment even though they would qualify by the spirit of the law.

Currency
We question why the currency of the facility should be an explicit requirement. In addition, the requirement seems to be overly restrictive. It is current market practice that lines are provided in one currency, whereas multi-currency lines are of minor relevance, if any, in practice.

Question 3: Do respondents agree with the specifications of the criterion relating to liquidity risk management of the liquidity provider?

Monitoring of receiver's liquidity position
We suggest deleting "*at least*". Under Article 414 of the CRR, banks are required, even in times of stress, to report the LCR daily at most. Even though a reporting requirement and the obligation "*to monitor and oversee the liquidity position of the receiver at least daily*" are not identical in meaning, the frequency condition should not go beyond that specified in Article 414.

Regarding Article 4 (c), we do not understand what additional criteria this paragraph introduces on top of paragraph (b).