EBA/Op/2015/12

12 June 2015

Opinion of the European Banking Authority on the Commission intention to amend draft Implementing Technical Standards with regard to currencies with constraints on the availability of liquid assets

Introduction and legal basis

Draft Implementing Technical Standards (ITS) with regard to currencies with constraints on the availability of liquid assets based on Article 419(4) of Regulation (EU) No 575/2013[1] were submitted by the EBA to the Commission for endorsement on 27 March 2014.

On 11 May 2015 the Commission informed the EBA that it, acting in accordance with the procedure set out in the fourth and fifth subparagraphs of Article 15(1) of Regulation (EU) No 1095/2010, intended to amend the draft implementing technical standards submitted by the EBA.

The EBA competence to deliver an opinion is based on the fifth subparagraph of Article 15(1) of Regulation (EU) No 1093/2010[2].

In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors[3], the Board of Supervisors has adopted this opinion.

General comments

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27. 6.2013, p. 1).

[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

[3] Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 11 December 2013 (Decision EBA DC 001 (Rev3)).

The draft ITS submitted by EBA included the Danish Krone (DKK) and the Norwegian Krone (NOK) as currencies for which there were insufficient liquid assets. According to the EBA analysis, the DKK qualified with a 2% insufficiency of liquid assets while the NOK insufficiency was much higher at 38%. An extra 25% is allowed for frictional purposes (the so-called free floating layer of liquid assets). Therefore the draft ITS allowed for DKK, a 27% (i.e. 2+25) derogation and for NOK, a 63% (i.e. 38+25) derogation.

The EBA analysis was calculated having regard to the Basel Committee of Banking Supervision's international standard for the liquidity coverage ratio (LCR) which limits the eligibility of covered bonds to a maximum of 40% of the liquid assets buffer in the Liquidity Coverage Ratio (LCR). From the Commission's side, examination of the draft ITS was delayed pending the adoption of the Commission Delegated Act which defines high quality liquid assets (HQLA) for the LCR under Union law. The Delegated Regulation (EU) 2051/61[4] was adopted on 10 October 2014.

Article 17(1)(b) of Delegated Regulation (EU) 2015/61 increased the maximum allowed for covered bonds from 40% to 70% of the LCR buffer. The Commission considers that covered bonds are plentiful in Demark and as a result, the DKK would no longer qualify as a currency for which there are insufficient liquid assets. The Danish authorities agree to this exclusion. While covered bonds are also important for the assessment of the NOK, given the much greater degree of liquid asset insufficiency for Norway, this would mean that the NOK would still qualify as a currency for which there are insufficient liquid assets.

The Commission intends to exclude the DKK as a currency for which there is insufficient liquid assets since it considers the indicated percentage of 27% is unjustified in the light of the 70% maximum allowed for covered bonds as a percentage of the LCR buffer under Article 17(1)(b) of Delegated Regulation (EU) 2015/61.

The Commission intends to maintain the NOK as a currency for which there are insufficient liquid assets and has invited the EBA to confirm whether the existing percentage derogation for NOK (i.e. 63%) is still appropriate.

The Commission also considers that recitals (2) to (6) of the draft ITS as submitted by the EBA provide general guidelines for the establishment of the list of currencies rather than reasons for the specific act in question, namely in this particular case the reasons for the inclusion of the NOK into the Annex of the draft Regulation. As a consequence, the Commission intends to set out reasons in the recitals of the ITS justifying why the NOK qualifies as a currency for which there are insufficient liquid assets.

Specific comments

[4] 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 1, 17 January 2015

The EBA supports the Commissions amendments to the draft ITS removing DKK as a currency for which there are insufficient liquid assets for the reasons set out in the general comments above. The EBA also supports the amendments to the recitals in order to justify why the NOK qualifies as such a currency.

The EBA considers that the existing percentage derogation for NOK should not be amended. It is not possible to carry out a new analysis to confirm the appropriate percentage without causing further substantial delay to the entry into force of the ITS which were submitted to the Commission 14 months ago, in particular due to the unavailability of detailed data on the impact of the changes introduced in Delegated Regulation 2015/61. The EBA's judgement is that while those changes can probably be expected to reduce the shortage of liquid assets for NOK, the changes are unlikely to be sufficient to substantially change the EBA's original conclusion.

The terms of the draft Regulatory Technical Standards specifying the derogations in Article 419(2) of Regulation (EU) No 575/2013 concerning currencies with constraints on the availability of liquid assets (RTS) were developed to ensure that the use of the derogations would not be unnecessary or disproportionate. Those RTS were submitted to the Commission for endorsement on 14 March 2014. The RTS specify a number of conditions which an institution would be required to meet before it can be considered to have justified needs for liquid assets. In particular, the requirement to ensure that holdings of liquid assets are consistent with the availability of those assets in the relevant currency is designed to ensure that the usage by institutions of the derogations is appropriate even where the actual availability of liquid assets is wider than anticipated in the ITS, and the provisions on fees will also disincentivise undue usage. These requirements will therefore mitigate the possibility that the percentage specified in the ITS is higher than would be calculated based on the provisions of Delegated Regulation 2015/61.

For the reasons above the EBA has amended the ITS on the basis of the Commission's proposed amendments and resubmits them to the Commission in the form set out in the Annex.

This opinion will be published on the EBA's website.

Done at London,

[signed]

Andrea Enria

Chairperson
For the Board of Supervisors

Annexes

EUROPEAN
COMMISSION

Brussels, XXX
[…](2015) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

laying down implementing technical standards with regard to currencies with constraints on the availability of liquid assets pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council

(Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

laying down implementing technical standards with regard to currencies with constraints on the availability of liquid assets pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council

(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 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[1], and in particular Article 419(4) thereof,

Whereas:

(1) Article 412(1) of Regulation (EU) No 575/2013 sets out a liquidity coverage requirement, establishing that institutions must hold liquid assets to ensure they maintain levels of liquidity buffers which are adequate to face any possible imbalance between liquidity inflows and outflows.

(2) Commission Delegated Regulation (EU) 2015/61[2], adopted pursuant to Article 460 of Regulation (EU) No 575/2013, specifies in detail that liquidity coverage requirement

(3) Where the justified needs for liquid assets in the light of the liquidity coverage requirement exceed the availability of those liquid assets in a currency, one or more derogations should apply for that currency, as set out in Article 419(2) of Regulation (EU) No 575/2013.

(4) It is therefore necessary to identify the currencies which should benefit from a derogation and the extent to which such a derogation should be available.

(5) In accordance with Article 419(4) of Regulation (EU) No 575/2013, the European Banking Authority (EBA) has developed a draft implementing standard in this regard.

(6) The assessment by EBA of justified needs was based on the best available data that could be supplied by competent authorities on the liquid assets in a currency, the amount of liquid assets locked-up by other investors and the needs of institutions for liquid assets.

(7) Before the entry into force of Delegated Regulation (EU) 2015/61, EBA has assessed the availability of liquid assets in accordance with the international standards adopted by the Basel Committee on Banking Supervision. That assessment was based on the amounts of liquid assets outstanding that are not locked-up by entities which are not

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[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).

subject to Regulation (EU) No 575/2013 and compared to the needs of institutions based on their estimated weighted net cash outflows over the following 30 days, taking into account the cap on inflows and factors likely to affect the shortage of liquid assets over a 3 to 5 year period. The assessment also took into account the need for institutions to be able to sell liquid assets in case of stress and therefore provided for a buffer of 25% of estimated demand. Additionally, the assessment took into account the propensity of institutions to target a liquidity coverage requirement which exceeds 100% and was therefore based on a target of 110% for the liquidity coverage requirement.

(8) Based on that assessment, EBA has identified the Norwegian krone (NOK) as a currency with constraints on the availability of liquid assets.

(9) The EBA analysis found that the justified needs for liquid assets exceeded the availability of liquid assets in NOK. Sovereign debt is one of the most liquid assets, but in the case of Norway the supply of Norwegian government debt is relatively constrained because of the favourable budgetary position. While international institutions and multinational development banks have also issued large amounts of bonds in NOK, these issues are predominantly private placements held by overseas investors and were therefore not considered by EBA as liquid and available for institutions within the scope of Regulation (EU) No 575/2013. Finally, the EBA analysis was based on the international liquidity standards adopted by the Basel Committee on Banking Supervision whilst the assessement whether the justified needs for liquid assets significantly exceed the availability of liquid assets in a currency should be based upon the definitive list of liquid assets established by Delegated Regulation (EU) 2015/61. The latter establishes a broader range of liquid assets, in particular in relation to covered bonds. However, this difference is insufficient to change the EBA conclusion that the justified needs for liquid assets exceeded the availability of liquid assets in NOK.

(10) In accordance with the procedure in Article 15 of Regulation (EU) No 1093/2010, the Commission has endorsed with amendments the draft implementing standard submitted by EBA after having sent the draft implementing standard back to EBA explaining the reasons for the amendments. The EBA provided a formal opinion supporting those amendments and confirming that the amount by which justified needs for liquid assets exceed availability of liquid assets in NOK as proposed in its original draft implementing standard should not be amended.

HAS ADOPTED THIS REGULATION:

Article 1

The justified needs for liquid assets in the light of the requirement in Article 412 of Regulation (EU) No 575/2013 shall be deemed to exceed the availability of those liquid assets in the currencies specified in the Annex to this Regulation by the percentage specified in that Annex.

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*.

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

Done at Brussels,

For the Commission
The President
Jean-Claude Juncker

EUROPEAN
COMMISSION

Brussels, XXX
[…](2015) XXX draft

ANNEX 1

ANNEX

to the

COMMISSION IMPLEMENTING REGULATION (EU)

laying down implementing technical standards with regard to currencies with constraints on the availability of liquid assets according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

ANNEX

List of currencies with constraints on the availability of liquid assets

No.	Currency	Amount by which justified needs for liquid assets exceed availability
1.	Norwegian Krone (NOK)	63%