Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/1230. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2017 No. 1230 may be subject to amendment by EU Exit Instruments made by the Prudential Regulation Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 2. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission 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 (Text with EEA relevance)

COMMISSION 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

(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 422(10) and Article 425(6) thereof,

Whereas:

(1) 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 (IPS), as provided for in Articles 29 and 34 of Commission Delegated Regulation (EU) 2015/61[(2)], is limited to those cases where the necessary safeguards are in place and only with the prior approval of the competent authorities. These safeguards are provided for in Articles 29(2) and 34(2) of Delegated Regulation (EU) 2015/61 in terms of additional objective criteria to be met in the context of these transactions. Those safeguards should be further specified so as to clearly define the conditions for their compliance.

(2) It should be ensured that the application of such preferential rates does not endanger the liquidity soundness of the liquidity provider and that it effectively alleviates the compliance with the liquidity coverage ratio of the liquidity receiver. A low liquidity risk profile should be demonstrated by the credit institutions' compliance with the liquidity coverage ratio and any other liquidity-related supervisory requirements and measures applied pursuant to Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU of the European Parliament and of the Council[(3)], together with the competent authorities' assessment, according to the latest supervisory review and evaluation process, that the institution's liquidity position poses a low level of risk, as objective references of their liquidity positions.

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(3) The effectiveness of the liquidity support within a group or an IPS on a cross-border basis should be guaranteed by a sound contractual framework evidenced by a legal opinion approved by the credit institutions' management body. A minimum remaining maturity of the line should ensure that the commitment is not punctual for a specific transaction but durable over a minimum period of time.

(4) It should be ensured that the liquidity provider can provide the liquidity receiver with the necessary liquidity support in a timely manner, even in times of stress. For these purposes, the liquidity provider should monitor the liquidity position of the liquidity receiver and any contingency funding plans of the liquidity provider and receiver should address the effects of applying a preferential outflow or inflow rate.

(5) The conditions for compliance with the additional objective criteria set out in Article 29(2) and Article 34(2) of Delegated Regulation (EU) 2015/61 should be aimed at providing sufficient ground to expect a higher than normal cross-border liquidity flows within a group or an IPS in stress while not hampering the efficiency and effectiveness of a model where the liquidity is normally centrally managed. In certain specific cases of non-compliance with those conditions, namely where the liquidity provider or receiver does not meet or expects not to meet the liquidity coverage ratio or any liquidity related supervisory requirements or measures, or where the remaining maturity of the liquidity or credit line falls below the prescribed minimum or a notice of cancellation of the line is given, the relevant competent authorities should reassess whether the application of preferential liquidity outflow or inflow rates may be continued with the aim of avoiding the unintended consequences that an automatic suspension of the preferential treatment might cause in terms of procyclical and contagion effects.

(6) The further specification of those additional objective criteria should not alter the responsibility of the credit institutions — as liquidity provider or liquidity receiver — to manage their liquidity risk on a prudent basis.

(7) The further specification of those additional objective criteria should also be aimed at providing competent authorities with sufficient tools to determine the application of a preferential outflow or inflow rate.

(8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(9) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, in accordance with Article 10 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(4)], and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

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Article 1

Subject matter

This Regulation further specifies the additional objective criteria laid down in Article 29(2) and Article 34(2) of Delegated Regulation (EU) 2015/61 for the purposes of the application of the waiver set out therein.

Article 2

Low liquidity risk profile of the liquidity provider and receiver

1 The low liquidity risk profile referred to in point (a) of Article 29(2) and in point (a) of Article 34(2) of Delegated Regulation (EU) 2015/61 shall satisfy the following conditions:

a the liquidity provider and receiver have complied with the required level of the liquidity coverage ratio as set out in Articles 4 and 38 of Delegated Regulation (EU) 2015/61, as well as any liquidity-related supervisory requirements or measures applied pursuant to Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU, on an on-going basis and for at least 12 months prior to the authorisation to apply the preferential outflow or inflow rate for undrawn credit or liquidity facilities pursuant to Article 29(1) and Article 34(1) of Delegated Regulation (EU) 2015/61;

b the liquidity provider and receiver's liquidity positions pose a low level of risk according to the latest supervisory review and evaluation process conducted in accordance with Title VII, Chapter 2, Section III of Directive 2013/36/EU.

For the purposes of determining whether the condition referred to in point (a) of this paragraph is satisfied, the required level of the liquidity coverage ratio shall be calculated on the basis that the preferential liquidity outflow or inflow rate applied during the twelve month period referred to in that point.

2 Where the liquidity provider or receiver has been granted permission from the relevant competent authorities to waive the condition set out in point (d) of Article 29(1) and point (d) of Article 34(1) of Delegated Regulation (EU) 2015/61 and a liquidity provider or receiver does not meet or expects not to meet the required level of the liquidity coverage ratio set out in Articles 4 and 38 of that Delegated Regulation, or any liquidity related supervisory requirements or measures applied under Title VII, Chapter 2, Sections III and IV of Directive 2013/36/EU, it shall immediately notify the relevant competent authorities and include a description of the effects of such failure to meet that liquidity coverage ratio or any liquidity related supervisory requirements or measures on the corresponding preferential outflow or inflow rate applied to its counterparty.

3 Where the liquidity provider or receiver has been granted permission from the relevant competent authorities to waive the condition set out in point (d) of Article 29(1) and point (d) of Article 34(1) of Delegated Regulation (EU) 2015/61 and a liquidity provider or receiver does not meet or expects not to meet the required level of the liquidity coverage ratio set out in that Delegated Regulation, the notification referred to in paragraph 2 shall be included in the immediate notification and restoration plan required under Article 414 of Regulation (EU) No 575/2013.

4 In the cases referred to in paragraphs 2 and 3, the relevant competent authorities shall determine whether the preferential outflow or inflow rates continue to apply in accordance with the process referred to in point (b) of Article 20(1) of Regulation (EU) No 575/2013.