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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/1618

of 12 July 2018

amending Delegated Regulation (EU) No 231/2013 as regards safe-keeping duties of depositaries

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ⁽¹⁾, and in particular Article 21(17) thereof,

Whereas:

- (1) As a result of differing national securities and insolvency laws, which are not harmonised at Union level, there is a divergence in the level of protection for financial instruments held in custody by third parties for Alternative Investment Funds ('AIFs') clients from insolvency risks. In seeking to ensure strong client asset protection as provided for under Directive 2011/61/EU while accommodating more robust national law requirements in relation to those non-harmonised areas, it is necessary to clarify the obligations relating to the safe keeping of assets laid down in Directive 2011/61/EU.
- (2) Currently competent authorities and industry apply the asset segregation requirements laid down in Commission Delegated Regulation (EU) No 231/2013 ⁽²⁾ differently. While depositaries, which are at the first level of a custody chain, have the obligation to provide an individual account to hold financial instruments for each AIF client, it is necessary to clarify that where the custody function is delegated to a third party, the latter should be able to hold assets of one depositary's clients, including the assets for AIFs and Undertakings for Collective Investment in Transferable Securities ('UCITS'), in an omnibus account. This omnibus account should always exclude the proprietary assets of the depositary and the third party's proprietary assets as well as assets belonging to other clients of the third party. Correspondingly, in cases where custody function is further delegated, the sub-custodian should be able to hold assets of the delegating custodian's clients in an omnibus account. This omnibus account should always exclude the sub-custodian's proprietary assets and proprietary assets of the delegating custodian as well as assets belonging to other clients of the sub-custodian. This is necessary in order to achieve a healthy balance between the market efficiency and investor protection.
- (3) In order to minimise the risk of loss of assets held in omnibus financial instruments accounts provided by third parties, to whom the custody function has been delegated, the frequency of reconciliations between the financial securities accounts and the records of the depositary of an AIF client and the third party or between the third parties, where the custody function has been delegated further down the custody chain, should ensure a timely transmission of the relevant information to the depositary. Moreover, the frequency of those reconciliations

⁽¹⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

should depend on any movement in that omnibus account, including transactions relating to the assets belonging to other clients of the depositary that are kept in the same omnibus account as the AIF's assets.

- (4) The depositary should be able to continue to carry out its duties effectively where the custody of assets belonging to its AIF clients is delegated to a third party. It is therefore necessary to require that the depositary maintains a record in the financial instruments account it has opened in the name of its AIF client or in the name of the AIFM, acting on behalf of the AIF, showing that the assets kept in custody by a third party belong to that particular AIF.
- (5) To strengthen the depositaries' standing in relation to third parties to whom the custody of assets is delegated, that relationship should be documented by a written delegation contract. That contract should allow the depositary to take all the necessary steps ensuring that the assets kept in custody are properly safeguarded and that the third party complies at all times with the delegation contract and the requirements of Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013. Furthermore, the depositary and the third party should formally agree whether the third party is allowed to further delegate the custody functions. In that instance, the arrangement or contract between the delegating third party and the third party to whom the custody functions are further delegated should be subject to rights and obligations which are equivalent to those established between the depositary and the delegating third party.
- (6) In order to enable the depositary to fulfil its functions it is necessary to strengthen depositaries' oversight over the third parties, regardless of whether they are located inside or outside the Union. It should be required that depositaries verify whether financial instruments of AIFs are correctly recorded in the books of a third party and that the records kept are sufficiently accurate in order to be able to identify the nature, location and ownership of the assets held in custody. To facilitate effective fulfilment of the depositaries' duties, third parties should provide them with a statement on any change affecting the assets held in custody for the depositaries' AIF clients.
- (7) As part of the depositaries' obligations to exercise care and diligence in cases of delegation of the custody functions, before delegating this function to a third party located outside of the Union, the depositary should receive an independent legal opinion assessing the insolvency law of the third country where that third party is located this includes an evaluation of the level of protection afforded by segregated financial instruments accounts in that jurisdiction. The opinion provided for each jurisdiction by relevant industry federations or by law firms for the benefit of several depositaries should be acceptable. Furthermore, the depositary should ensure that the third party located outside the Union informs it of any change in circumstances or in that third country's insolvency law that may affect the status of the assets of the depositary's AIF clients.
- (8) In order to allow depositaries time to adapt to the new requirements contained in this Regulation, the starting date of application of this Regulation should be deferred for eighteen months after publication in the *Official Journal of the European Union*.
- (9) The measures introduced by this Regulation are in accordance with the opinion of the European Securities and Markets Authority. ⁽¹⁾
- (10) The measures introduced by this Regulation are in accordance with the opinion of the expert group of the European Securities Committee.
- (11) Delegated Regulation (EU) No 231/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 231/2013 is amended as follows:

(1) Article 89 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(c) reconciliations are conducted as often as necessary between the depositary's internal accounts and records and those of any third party to whom custody functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU.;

⁽¹⁾ Opinion of ESMA, 20.7.2017, 34 45 277.

(ii) the following second subparagraph is added:

‘In relation to point (c) of the first subparagraph, the frequency of the reconciliations shall be determined on the basis of the following:

- (a) the normal trading activity of the AIF;
- (b) any trade occurring outside the normal trading activity;
- (c) any trade occurring on behalf of any other client whose assets are held by the third party in the same financial instruments account as the assets of the AIF.’;

(b) paragraph 2 is replaced by the following:

‘2. Where a depositary has delegated its custody functions to a third party in accordance with Article 21(11) of Directive 2011/61/EU, it shall remain subject to the requirements of points (a) to (e) of paragraph 1 of this Article. It shall also ensure that the third party complies with the requirements of points (b) to (g) of paragraph 1 and segregation obligations laid down in Article 99.’;

(2) in Article 98, the following paragraph 2a is inserted:

‘2a. A contract, by which the depositary appoints a third party to hold assets of that depositary’s AIF clients in custody, shall contain at least the following provisions:

- (a) a guarantee of the depositary’s right to information, inspection, and access to the relevant records and accounts of the third party holding assets in custody to enable the depositary to fulfil its oversight and due diligence obligations and in particular allow the depositary to:
 - (i) identify all entities within the custody chain;
 - (ii) verify that the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depositary’s books in the name of the AIF or in the name of the AIFM, acting on behalf of the AIF, matches the quantity of the identified financial instruments held in custody by the third party for that AIF as recorded in the financial instruments account opened in the third party’s books;
 - (iii) verify that the quantity of the identified financial instruments, which are registered and held in a financial instruments account opened at the issuer’s Central Securities Depository (CSD) or its agent, in the name of the third party on behalf of its clients, matches the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depositary’s books in the name of each of its AIF clients or in the name of the AIFM acting on behalf of the AIF;
- (b) details of equivalent rights and obligations agreed between the third party and another third party, in the event of a further delegation of custody functions.’;

(3) Article 99 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party, to whom safe-keeping functions are delegated pursuant to Article 21(11) of Directive 2011/61/EU, acts in accordance with the segregation obligation laid down in point (iii) of Article 21(11)(d) of that Directive by ensuring and verifying that the third party:

- (a) correctly records all identified financial instruments in the financial instruments account, which is opened in the third party’s books, in order to hold in custody the financial instruments for the depositary’s clients, which excludes proprietary financial instruments of the depositary and of the third party and of the third party’s other clients, to enable the depositary to match the quantity of the identified financial instruments recorded in the accounts opened in the depositary’s books in the name of each of its AIF clients or in the name of the AIFM acting on behalf of the AIF;
- (b) keeps all necessary records and financial instruments accounts to enable the depositary at any time and without delay to distinguish assets of the depositary’s clients from the third party own assets, assets of the third party’s other clients and assets held for the depositary for its own account;

- (c) maintains records and financial instruments accounts in a way that ensures their accuracy, and in particular their correspondence to the assets kept safe for the depositary's AIF clients and on the basis of which the depositary can at any time establish the precise nature, location and ownership status of those assets;
- (d) provides the depositary with a statement, on a regular basis and in any case whenever a change in circumstances occurs, detailing the assets of the depositary's AIF clients;
- (e) conducts reconciliations, as often as necessary, between its financial instruments accounts and internal records and those of the third party to whom it has delegated safe-keeping functions in accordance with Article 21(11) of Directive 2011/61/EU.

The frequency of the reconciliation shall be determined in accordance with Article 89(1);

- (f) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud poor administration, inadequate record-keeping or negligence;
 - (g) where the third party is an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC, which is subject to effective prudential regulation and supervision that has the same effect as Union law and is effectively enforced, the depositary shall take the necessary steps to ensure that the AIF's cash is held in an account or accounts in accordance with Article 21(7) of Directive 2011/61/EU.;
- (b) the following paragraph 2a is inserted:

'2a. Where a depositary delegates its custody functions to a third party located in a third country in accordance with Article 21(11) of Directive 2011/61/EU, in addition to the requirements of paragraph 1 of this Article, the depositary shall ensure the following:

- (a) the depositary receives legal advice from an independent natural or legal person confirming that the applicable insolvency law recognises the following:
 - (i) the segregation of the assets of the depositary's clients from the third party's own assets, from the assets of the third party's other clients and from the assets held by the third party for the depositary's own account;
 - (ii) the assets of the depositary's AIF clients do not form part of the third party's estate in case of insolvency;
 - (iii) the assets of the depositary's AIF clients are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom custody functions have been delegated in accordance with Article 21(11) of Directive 2011/61/EU;
- (b) the third party takes the following steps:
 - (i) it ensures that the conditions laid down in point (a) are met when concluding the delegation agreement with the depositary and on an ongoing basis for the entire duration of the delegation;
 - (ii) it immediately informs the depositary whenever any of the conditions referred to in point (i) are no longer met;
 - (iii) it informs the depositary about any changes to applicable insolvency law and its effective application.;

- (c) paragraph 3 is replaced by the following:

'Paragraphs 1, 2 and 2a shall apply mutatis mutandis when the third party, to whom safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU, has decided to delegate all or part of its safe-keeping functions to another third party pursuant to the third subparagraph of Article 21(11) of Directive 2011/61/EU.'

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 1 April 2020.

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

Done at Brussels, 12 July 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2018/1619
of 12 July 2018
amending Delegated Regulation (EU) 2016/438 as regards safe-keeping duties of depositaries
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽¹⁾, and in particular Article 26b thereof,

Whereas:

- (1) As a result of differing national securities and insolvency laws, which are not harmonised at the Union level, there is a divergence in the level of protection for financial instruments held in custody for undertakings for collective investment in transferable securities ('UCITS') clients from insolvency risks. In seeking to ensure strong client asset protection as provided for under Directive 2009/65/EC, while accommodating more robust national law requirements in relation to those non-harmonised areas, it is necessary to clarify the obligations relating to the safe-keeping of assets laid down in the Directive 2009/65/EC.
- (2) Currently, competent authorities and industry apply the asset segregation requirements laid down in Commission Delegated Regulation (EU) 2016/438 ⁽²⁾ differently. While depositaries, which are at the first level in a custody chain, have the obligation to provide an individual account to hold financial instruments for each UCITS client, it is necessary to clarify that where the custody function is delegated to a third party, the latter should be able to hold assets of one depositary's clients, including the assets for UCITS and Alternative Investment Funds ('AIFs'), in an omnibus account. This omnibus account should always exclude the proprietary assets of the depositary and the third party's proprietary assets as well as assets belonging to other clients of the third party. Correspondingly, in cases where custody function is further delegated, the sub-custodian should be able to hold assets of the delegating custodian's clients in an omnibus account. This omnibus account should always exclude the sub-custodian's proprietary assets and proprietary assets of the delegating custodian as well as assets belonging to other clients of the sub-custodian. This is necessary in order to achieve a healthy balance between the market efficiency and investor protection.
- (3) In order to minimise the risk of loss of assets held in omnibus financial instruments accounts provided by third parties, to whom the custody function has been delegated, the frequency of reconciliations between the financial securities accounts and the records of the depositary of a UCITS client and the third party or between the third parties, where the custody function has been delegated further down the custody chain, should ensure a timely transmission of the relevant information to the depositary. Moreover, the frequency of those reconciliations should depend on any movement in that omnibus account, including transactions relating to the assets belonging to other clients of the depositary that are kept in the same omnibus account as the UCITS' assets.
- (4) The depositary should be able to continue to carry out its duties effectively where the custody of assets belonging to its UCITS clients is delegated to a third party. It is therefore necessary to require that the depositary maintains a record in the financial instruments account it has opened in the name of a UCITS or in the name of the management company acting on behalf of the UCITS showing that the assets kept in custody by a third party belong to that particular UCITS.
- (5) To strengthen the depositaries' standing in relation to third parties to whom the custody of assets is delegated, that relationship should be documented by a written delegation contract. That contract should allow the depositary to take all the necessary steps for ensuring that the assets kept in custody are properly safeguarded and the third party complies at all times with the delegation contract and the requirements of Directive 2009/65/EC and Delegated Regulation (EU) 2016/438. Furthermore, the depositary and the third party should formally agree whether the third party is allowed to further delegate the custody functions. In that instance, the

⁽¹⁾ OJ L 302, 17.11.2009, p. 32.

⁽²⁾ Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (OJ L 78, 24.3.2016, p. 11).

contract between the delegating third party and the third party to whom the custody functions are further delegated should be subject to the rights and obligations which are equivalent to those established between the depositary and the delegating third party.

- (6) In order to enable the depositary to fulfil its functions it is necessary to strengthen depositaries' oversight over third parties, regardless of whether they are located inside or outside the Union. It should be required that depositaries verify whether financial instruments of UCITS are correctly recorded in the books of those third parties. The records kept by third parties should be sufficiently accurate in order to be able to identify the nature, location and ownership of the asset. To facilitate effective fulfilment of the depositaries' duties, third parties should provide them with a statement on any change affecting the assets held in custody for depositaries' UCITS clients.
- (7) In order to improve the clarity and legal certainty of Delegated Regulation (EU) 2016/438, it is necessary to amend certain internal references which are incorrect. Delegated Regulation (EU) 2016/438 should therefore be amended accordingly.
- (8) In order to allow depositaries time to adapt to these new requirements, the date of application should be deferred for 18 months after publication of this Regulation in the *Official Journal of the European Union*.
- (9) The measures introduced by this Regulation are in accordance with the opinion of the European Securities and Markets Authority ⁽¹⁾.
- (10) The measures introduced by this Regulation are in accordance with the opinion of the expert group of the European Securities Committee.
- (11) Delegated Regulation (EU) 2016/438 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2016/438 is amended as follows:

(1) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(c) reconciliations are conducted as frequently as necessary between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC.;

(ii) the following second subparagraph is added:

'In relation to point (c) of the first subparagraph, the frequency of the reconciliations shall be determined on the basis of the following:

(a) the normal trading activity of the UCITS;

(b) any trade occurring outside the normal trading activity;

(c) any trade occurring on behalf of any other client whose assets are held by the third party in the same financial instruments account as the assets of the UCITS.;

(b) paragraph 2 is replaced by the following:

'2. Where a depositary has delegated its safekeeping functions, with regard to assets held in custody, to a third party in accordance with Article 22a of Directive 2009/65/EC, it shall remain subject to the requirements of points (a) to (e) of paragraph 1. The depositary shall also ensure that the third party complies with the requirements of points (b) to (g) of paragraph 1.;

⁽¹⁾ Opinion of ESMA, 20.7.2017, 34 45 277.

(2) in Article 15, the following paragraph 2a is inserted:

‘2a. A contract by which the depositary appoints a third party to hold assets of that depositary’s UCITS clients in custody, shall contain at least the following provisions:

- (a) a guarantee of the depositary’s right to information, inspection, and access to the relevant records and financial instruments accounts of the third party holding assets in custody to enable the depositary to fulfil its oversight and due diligence obligations and in particular allow the depositary to:
 - (i) identify all entities within the custody chain;
 - (ii) verify that the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depositary’s books in the name of the UCITS or in the name of the management company acting on behalf of the UCITS matches the quantity of the identified financial instruments held in custody by the third party for that UCITS as recorded in the financial instruments account opened in the third party’s books;
 - (iii) verify that the quantity of the identified financial instruments, which are registered and held in a financial instruments account opened at the issuer’s Central Securities Depository (‘CSD’) or its agent, in the name of the third party on behalf of its clients, matches the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depositary’s books in the name of each of its UCITS clients or in the name of the management company acting on behalf of the UCITS;
- (b) details of equivalent rights and obligations agreed between the third party and another third party, in the event of a further delegation of custody functions.’;

(3) in Article 16, paragraph 1 is replaced by the following:

‘1. Where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC acts in accordance with the segregation obligation laid down in point (c) of Article 22a(3) of that Directive by ensuring and verifying that the third party:

- (a) correctly records all identified financial instruments in the financial instruments account, which is opened in the third party’s books, in order to hold in custody the financial instruments for the depositary’s clients, which excludes proprietary financial instruments of the depositary and of the third party and of the third party’s other clients, to enable the depositary to match the quantity of the identified financial instruments recorded in the accounts opened in the depositary’s books in the name of each of its UCITS clients or in the name of the management company acting on behalf of the UCITS;
- (b) keeps all necessary records and financial instruments accounts to enable the depositary at any time and without delay to distinguish assets of the depositary’s clients from the third party own assets, assets of the third party’s other clients and assets held for the depositary for its own account;
- (c) maintains records and financial securities accounts in a way that ensures their accuracy, and in particular their correspondence to the assets kept safe for the depositary’s UCITS clients and on the basis of which the depositary can at any time establish the precise nature, location and ownership status of those assets;
- (d) provides the depositary with a statement, on a regular basis and whenever a change in circumstances occurs, detailing the assets of the depositary’s UCITS clients;
- (e) conducts reconciliations, as often as necessary, between its financial instruments accounts and internal records and those of the third party to whom it has delegated custody functions in accordance with point (c) of Article 22a(3) of Directive 2009/65/EC.

The frequency of the reconciliation shall be determined in accordance with Article 13(1);

- (f) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud, poor administration, inadequate record-keeping or negligence;
- (g) holds the UCITS’ cash in an account or accounts with a central bank of a third country or a credit institution authorised in a third country, provided that the prudential, supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authorities of the UCITS home Member States as at least equivalent to those applied in the Union, in accordance with point (c) of Article 22(4) of Directive 2009/65/EC.’;

(4) Article 17 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

‘receives legal advice from an independent natural or legal person confirming that the applicable insolvency law recognises the segregation of the assets of the depositary’s clients from the third party’s own assets, from the assets of the third party’s other clients and from the assets held by the third party for the depositary’s own account and that the assets of the depositary’s UCITS clients do not form part of the third party’s estate in case of insolvency and are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom safekeeping functions have been delegated in accordance with Article 22a of Directive 2009/65/EC.’;

(b) in paragraph 2, points (d) and (e) are deleted;

(c) paragraph 3 is deleted;

(5) in Article 22, paragraph 3 is replaced by the following:

‘The management company or the investment company shall demonstrate to the competent authority of the UCITS home Member State that it is satisfied with the appointment of the depositary and that the appointment is in the sole interest of the UCITS and the investors of the UCITS. The management company or the investment company shall make the documentary evidence referred to in paragraph 2 available to the competent authority of the UCITS home Member State.’.

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 1 April 2020.

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

Done at Brussels, 12 July 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2018/1620**of 13 July 2018****amending 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 of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms 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 in order to improve alignment with international standards and facilitate more efficient liquidity management by credit institutions.
- (2) In particular, in order to take adequate account of activities carried out by credit institutions active outside the Union, any requirement for a minimum issue size applying to liquid assets held by a subsidiary undertaking in a third country should be waived, so that such assets can be recognised for consolidation purposes. Otherwise, the parent institution could suffer a shortfall in liquid assets at consolidated level since the liquidity requirement arising from a subsidiary in a third country would be included in the consolidated liquidity requirement while the assets held by that subsidiary to fulfil its liquidity requirement in the third country would be excluded from the consolidated liquidity requirement. However, the assets of the subsidiary undertaking in a third country should only be recognised up to the level of the stressed net liquidity outflows incurred in the same currency as the currency in which the assets are denominated and arising from that particular subsidiary. Moreover, as for any other third-country assets, the assets should only be recognised if they qualify as liquid assets under the national law of the third country in question.
- (3) It is recognised that central banks can provide liquidity in their own currency and that the credit rating of central banks is less relevant for liquidity purposes than for solvency purposes. As a result, and in order to align the rules in Delegated Regulation (EU) 2015/61 more closely with the international standard and to provide a level playing field for internationally active credit institutions, reserves held by a third country subsidiary or branch of a Union credit institution in the central bank of a third country which is not assigned a credit assessment of credit quality step 1 by a nominated external credit assessment institution should be eligible as level 1 liquid assets where certain conditions are met. Specifically, those reserves should be eligible where the credit institution is permitted to withdraw them at any time during stress periods and, in addition, the conditions for their withdrawal are specified in an agreement between the supervisory authority of the third country and the central bank in which the reserves are held or in the applicable rules of the third country. However, those reserves should only be capable of being recognised as level 1 assets to cover stressed net liquidity outflows incurred in the same currency as that in which the reserves are denominated.
- (4) It is appropriate to take into account Regulation (EU) 2017/2402 of the European Parliament and of the Council ⁽³⁾. That Regulation contains criteria to determine whether a securitisation can be designated as a simple, transparent and standardised ('STS') securitisation. Since those criteria ensure that STS securitisations are of high quality, they should also be used to determine which securitisations are to count as high quality liquid assets for the calculation of the liquidity coverage requirement. Securitisations should therefore be eligible as level 2B assets

⁽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⁾ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

for the purposes of Delegated Regulation (EU) 2015/61 if they fulfil all the requirements laid down in Regulation (EU) 2017/2402, in addition to those criteria already specified in Delegated Regulation (EU) 2015/61 that are specific to their liquidity characteristics.

- (5) The implementation of Delegated Regulation (EU) 2015/61 should not hinder the effective transmission of monetary policy to the economy. Transactions with the ECB or the central bank of a Member State can be expected to be rolled-over under conditions of severe stress. It should therefore be possible for competent authorities to waive the unwind mechanism for the calculation of the liquidity buffer in the case of secured transactions with the ECB or the central bank of a Member State where the transactions involve high quality liquid assets on at least one leg of each transaction and are due to mature within the next 30 calendar days. However, before granting the waiver, competent authorities should be required to consult with the central bank that is the counterparty to the transaction, and also with the ECB if that central bank is an Eurosystem central bank. In addition, the waiver should be subject to appropriate safeguards in order to avoid possible regulatory arbitrage opportunities or adverse incentives for credit institutions. Finally, to align the Union rules more closely with the international standard set by the BCBS, collateral received through derivatives transactions should be removed from the unwind mechanism.
- (6) In addition, the treatment of outflow and inflow rates for repurchase agreements ('repos'), reverse repurchase agreements ('reverse repos') and collateral swaps should be fully aligned with the approach in the international standard for the liquidity coverage ratio set by the Basel Committee on Banking Supervision ('BCBS'). Specifically, the cash outflows calculation should be directly linked to the prolongation rate of the transaction (aligned with the haircut on the collateral provided applied to the cash liability, as in the BCBS standard) rather than to the liquidity value of the underlying collateral.
- (7) Given divergent interpretations that have emerged, it is important to clarify various provisions of Delegated Regulation (EU) 2015/61, in particular regarding the fulfilment of the liquidity coverage requirement; the eligibility in the buffer of assets included in a pool available to obtain funding under uncommitted lines operated by the central bank, of CIUs and of deposits and other funding in cooperative networks and institutional protection schemes; the calculation of additional liquidity outflows for other products and services; the granting of preferential treatment to intragroup credit and liquidity facilities; the treatment of short position; and the recognition of monies due from securities maturing in the next 30 calendar days,
- (8) Delegated Regulation (EU) 2015/61 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) in Article 2(3), point (a) is replaced by the following:

'(a) third country assets held by a subsidiary undertaking in a third country may be recognised as liquid assets for consolidation purposes where they qualify as liquid assets under that third country's national law setting out the liquidity coverage requirement and they satisfy one of the following conditions:

- (i) the assets meet all the requirements laid down in Title II of this Regulation;
- (ii) the assets fail to meet the specific requirement laid down in Title II of this Regulation with respect to their issue size but meet all the other requirements laid down therein.

The assets recognisable by virtue of point (ii) may only be recognised up to the amount of the stressed net liquidity outflows incurred in the particular currency in which they are denominated and arising from that same subsidiary undertaking;';

- (2) Article 3 is amended as follows:

(a) points (8) and (9) are deleted;

(b) point (11) is replaced by the following:

'11. "stress" means a sudden or severe deterioration in the solvency or liquidity position of a credit institution due to changes in market conditions or idiosyncratic factors as a result of which there is a significant risk that the credit institution becomes unable to meet its commitments as they fall due within the next 30 calendar days;';

(3) Article 4 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘5. Credit institutions shall calculate and monitor their liquidity coverage ratio in the reporting currency for all items, irrespective of their actual currency denomination.

In addition, credit institutions shall separately calculate and monitor their liquidity coverage ratio for certain items as follows:

(a) for items that are subject to separate reporting in a currency other than the reporting currency in accordance with Article 415(2) of Regulation (EU) No 575/2013, credit institutions shall separately calculate and monitor their liquidity coverage ratio in that other currency;

(b) for items denominated in the reporting currency where the aggregate amount of liabilities denominated in currencies other than the reporting currency equals or exceeds 5 % of the credit institution’s total liabilities, excluding regulatory capital and off-balance-sheet items, credit institutions shall separately calculate and monitor their liquidity coverage ratio in the reporting currency.

Credit institutions shall report to their competent authority the liquidity coverage ratio in accordance with Commission Implementing Regulation (EU) No 680/2014.’;

(b) the following paragraph 6 is added:

‘6. Credit institutions shall not double-count liquid assets, inflows and outflows.’;

(4) Article 7 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The assets shall be a property, right, entitlement, or interest, that is held by the credit institution, or included in a pool as referred to in point (a), and is free from any encumbrance. For those purposes, an asset shall be deemed to be unencumbered where it is not subject to any legal, contractual, regulatory or other restriction preventing the credit institution from liquidating, selling, transferring, assigning or, generally, disposing of the asset via an outright sale or a repurchase agreement within the following 30 calendar days. The following assets shall be deemed to be unencumbered:

(a) assets included in a pool which are available for immediate use as collateral to obtain additional funding under committed but not yet funded credit lines available to the credit institution or, if the pool is operated by a central bank, under uncommitted and not yet funded credit lines available to the credit institution. This point shall include assets placed by a credit institution with the central institution in a cooperative network or institutional protection scheme. Credit institutions shall assume that assets in the pool are encumbered in order of increasing liquidity on the basis of the liquidity classification set out in Chapter 2, starting with assets ineligible for the liquidity buffer;

(b) assets that the credit institution has received as collateral for credit risk mitigation purposes in reverse repo or securities financing transactions and that the credit institution may dispose of.’;

(b) paragraph 4 is amended as follows:

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

‘(a) another credit institution, unless one or more of the following conditions is met:

(i) the issuer is a public sector entity referred to in point (c) of Article 10(1) or in point (a) or (b) of Article 11(1);

(ii) the asset is a covered bond referred to in point (f) of Article 10(1) or in point (c) or (d) of Article 11(1) or in point (e) of Article 12(1);

(iii) the asset belongs to the category described in point (e) of Article 10(1).’;

(ii) 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. For the purposes of this Article, SSPEs shall be deemed not included within the entities referred to in this point.’;

(c) in paragraph 7, the following point (aa) is inserted:

‘(aa) the exposures to central governments referred to in point (d) of Article 10(1);’;

(5) Article 8 is amended as follows:

(a) in paragraph 1, in point (a) of the second subparagraph, point (ii) is replaced by the following:

‘(ii) the exposures to central banks referred to in points (b) and (d) of Article 10(1);’;

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

‘(b) putting in place internal systems and controls to give the liquidity management function effective operational control to monetise the holdings of liquid assets at any point in the 30 calendar day stress period and to access the contingent funds without directly conflicting with any existing business or risk management strategies. In particular, an asset shall not be included in the liquidity buffer where monetisation of the asset without replacement throughout the 30 calendar day stress period would remove a hedge that would create an open risk position in excess of the internal limits of the credit institution;’;

(6) Article 10 is amended as follows:

(a) in point (b) of paragraph 1, point (iii) is replaced by the following:

‘(iii) reserves held by the credit institution in a central bank referred to in point (i) or (ii) provided that the credit institution is permitted to withdraw such reserves at any time during stress periods and that the conditions for such withdrawal have been specified in an agreement between the competent authority of the credit institution and the central bank in which the reserves are held, or in the applicable rules of the third country.

For the purposes of this point, the following shall apply:

- where the reserves are held by a subsidiary credit institution, the conditions for the withdrawal shall be specified in an agreement between the Member State or third country competent authority of the subsidiary credit institution and the central bank in which the reserves are held, or in the applicable rules of the third country, as applicable,
- where the reserves are held by a branch, the conditions for the withdrawal shall be specified in an agreement between the competent authority of the Member State or third country where the branch is located and the central bank in which the reserves are held, or in the applicable rules of the third country, as applicable;’;

(b) point (d) of paragraph 1 is replaced by the following:

‘(d) the following assets:

- (i) assets representing claims on or guaranteed by the central government or central bank of a third country which is not assigned a credit assessment of credit quality step 1 by a nominated ECAI in accordance with Article 114(2) of Regulation (EU) No 575/2013;
- (ii) reserves held by the credit institution in a central bank referred to in point (i), provided that the credit institution is permitted to withdraw those reserves at any time during stress periods and provided that the conditions for such withdrawal have been specified either in an agreement between the competent authorities of that third country and the central bank in which the reserves are held or in the applicable rules of that third country.

For the purposes of point (ii), the following shall apply:

- where the reserves are held by a subsidiary credit institution, the conditions for the withdrawal shall be specified either in an agreement between the third country competent authority of the subsidiary credit institution and the central bank in which the reserves are held or in the applicable rules of the third country,
- where the reserves are held by a branch, the conditions for the withdrawal shall be specified either in an agreement between the competent authority of the third country where the branch is located and the central bank in which the reserves are held or in the applicable rules of the third country.

The aggregate amount of assets falling within points (i) and (ii) of the first subparagraph and denominated in a given currency that the credit institution may recognise as level 1 assets shall not exceed the amount of the credit institution's stressed net liquidity outflows incurred in that same currency.

Moreover, where part or all of the assets falling within points (i) and (ii) of the first subparagraph are denominated in a currency which is not the domestic currency of the third country in question, the credit institution may only recognise those assets as level 1 assets up to an amount equal to the amount of the credit institution's stressed net liquidity outflows incurred in that foreign currency that corresponds to the credit institution's operations in the jurisdiction where the liquidity risk is being taken;

(c) in point (f) of paragraph 1, point (ii) is replaced by the following:

'the exposures to institutions in the cover pool meet the conditions laid down in Article 129(1)(c) of Regulation (EU) No 575/2013 or, where the competent authority has granted the partial waiver referred to in the last subparagraph of Article 129(1) of Regulation (EU) No 575/2013, the conditions referred to in that subparagraph;'

(d) paragraph 2 is replaced by the following:

'2. The market value of extremely high quality covered bonds referred to in point (f) of paragraph 1 shall be subject to a haircut of at least 7 %. Except as specified in relation to shares and units in CIUs in points (b) and (c) of Article 15(2), no haircut shall be required on the value of the remaining level 1 assets.'

(7) Article 11 is amended as follows:

(a) in point (c) of paragraph 1, point (ii) is replaced by the following:

'(ii) the exposures to institutions in the cover pool meet the conditions laid down in Article 129(1)(c) of Regulation (EU) No 575/2013 or, where the competent authority has granted the partial waiver referred to in the last subparagraph of Article 129(1) of Regulation (EU) No 575/2013, the conditions referred to in that subparagraph;'

(b) in point (d) of paragraph 1, point (iv) is replaced by the following:

'(iv) the exposures to institutions in the cover pool meet the conditions laid down in Article 129(1)(c) of Regulation (EU) No 575/2013 or, where the competent authority has granted the partial waiver referred to in the last subparagraph of Article 129(1) of Regulation (EU) No 575/2013, the conditions referred to in that subparagraph;'

(8) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Exposures in the form of asset-backed securities as referred to in Article 12(1)(a) shall qualify as level 2B securitisations where the following conditions are satisfied:

(a) the designation 'STS' or 'simple, transparent and standardised', or a designation that refers directly or indirectly to those terms, is permitted to be used for the securitisation in accordance with Regulation (EU) 2017/2402 of the European Parliament and of the Council (*) and is being so used;

(b) the criteria laid down in paragraph 2 and paragraphs 10 to 13 of this Article are met.

(*) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).';

(b) paragraph 2 is amended as follows:

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

(a) 'the position has been assigned a credit assessment of credit quality step 1 by a nominated ECAI in accordance with Article 264 of Regulation (EU) No 575/2013 or the equivalent credit quality step in the event of a short-term credit assessment;'

(b) 'the position is in the most senior tranche or tranches of the securitisation and possesses the highest level of seniority at all times during the ongoing life of the transaction. For these purposes, a tranche shall be deemed to be the most senior where after the delivery of an enforcement notice and where applicable an acceleration notice, the tranche is not subordinated to other tranches of the same securitisation transaction or scheme in respect of receiving principal and interest payments, without taking into account amounts due under interest rate or currency derivative contracts, fees or other similar payments in accordance with Article 242(6) of Regulation (EU) No 575/2013';

(ii) points (c) to (f) and points (h) to (k) are deleted;

(iii) point (g) is amended as follows:

(a) the introductory wording is replaced by the following:

'the securitisation position is backed by a pool of underlying exposures and those underlying exposures either all belong to only one of the following subcategories or else they consist of a combination of residential loans referred to in point (i) and residential loans referred to in point (ii)';

(b) point (iv) is replaced by the following:

'(iv) auto loans and leases to borrowers or lessees established or resident in a Member State. For these purposes, auto loans and leases shall include loans or leases for the financing of motor vehicles or trailers as defined in points (11) and (12) of Article 3 of Directive 2007/46/EC of the European Parliament and of the Council (*), agricultural or forestry tractors as referred to in Regulation (EU) No 167/2013 of the European Parliament and of the Council (**), two-wheel motorcycles or powered tricycles as referred to in Regulation (EU) No 168/2013 of the European Parliament and of the Council (***) or tracked vehicles as referred to in point (c) of Article 2(2) of Directive 2007/46/EC. Such loans or leases may include ancillary insurance and service products or additional vehicle parts, and in the case of leases, the residual value of leased vehicles. All loans and leases in the pool shall be secured with a first-ranking charge or security over the vehicle or an appropriate guarantee in favour of the SSPE, such as a retention of title provision;

(*) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

(**) Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (OJ L 60, 2.3.2013, p. 1).

(***) Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 60, 2.3.2013, p. 52).';

(c) paragraphs 3 to 9 are deleted;

(9) Article 15 is amended as follows:

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

'(b) where the credit institution is not aware of the exposures underlying the CIU, it shall assume, for the purposes of determining the liquidity level of the underlying assets and for the purposes of assigning the appropriate haircut to those assets, that the CIU invests in liquid assets, up to the maximum amount allowed under its mandate, in the same ascending order as liquid assets are classified for the purposes of paragraph 2, starting with the assets referred to in point (h) of paragraph 2 and ascending until the maximum total investment limit is reached';

(b) in paragraph 4, the following subparagraph is added:

'The correctness of the calculations made by the depository institution or by the CIU management company when determining the market value and haircuts for shares or units in CIUs shall be confirmed by an external auditor on at least an annual basis.';

(10) Article 16 is replaced by the following:

'Article 16

Deposits and other funding in cooperative networks and institutional protection schemes

1. Where a credit institution belongs to an institutional protection scheme of the type referred to in Article 113(7) of Regulation (EU) No 575/2013, to a network that would be eligible for the waiver provided for in Article 10 of that Regulation or to a cooperative network in a Member State, the sight deposits that the credit institution maintains with the central institution may be treated as liquid assets unless the central institution receiving the deposits treats them as operational deposits. Where the deposits are treated as liquid assets, they shall be treated in accordance with one of the following provisions:

- (a) where, in accordance with the national law or the legally binding documents governing the scheme or network, the central institution is obliged to hold or invest the deposits in liquid assets of a specified level or category, the deposits shall be treated as liquid assets of that same level or category in accordance with this Regulation;
- (b) where the central institution is not obliged to hold or invest the deposits in liquid assets of a specified level or category, the deposits shall be treated as level 2B assets in accordance with this Regulation and their outstanding amount shall be subject to a minimum haircut of 25 %.

2. Where, under the law of a Member State or the legally binding documents governing one of the networks or schemes described in paragraph 1, the credit institution has access within 30 calendar days to undrawn liquidity funding from the central institution or from another institution within the same network or scheme, such funding shall be treated as a level 2B asset to the extent that it is not collateralised by liquid assets and that it is not being dealt with in accordance with the provisions of Article 34. A minimum haircut of 25 % shall be applied to the undrawn committed principal amount of the liquidity funding.;

(11) Article 17 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The requirements set out in paragraph 1 shall be applied after adjusting for the impact on the stock of liquid assets of secured funding, secured lending or collateral swap transactions using liquid assets on at least one leg of the transaction where the transactions mature within 30 calendar days, after deducting any applicable haircuts and provided that the credit institution complies with the operational requirements laid down in Article 8.;

(b) the following paragraph 4 is added:

'4. The competent authority may, on a case-by-case basis, waive the application of paragraphs 2 and 3 in full or in part with respect to one or more secured funding, secured lending or collateral swap transactions using liquid assets on at least one leg of the transaction and maturing within 30 calendar days, provided that all of the following conditions are met:

- (a) the counterparty to the transaction or transactions is the ECB or the central bank of a Member State;
- (b) exceptional circumstances exist which pose a systemic risk affecting the banking sector of one or more Member States;
- (c) the competent authority has consulted with the central bank that is the counterparty to the transaction or transactions, and also with the ECB where that central bank is an Eurosystem central bank, before granting the waiver.;

(c) the following paragraph 5 is added:

'5. EBA shall, by 19 November 2020, report to the Commission on the technical suitability of the unwind mechanism set out in paragraphs 2 to 4 and on whether it is likely to have a detrimental impact on the business and risk profile of credit institutions established in the Union, on the stability and orderly functioning of financial markets, on the economy or on the transmission of monetary policy to the economy. This report shall assess the opportunity to change the unwind mechanism set out in paragraphs 2 to 4 and, where EBA finds either that the current unwind mechanism is technically not suitable or that it has a detrimental impact, it should recommend alternative solutions and evaluate their impact.

The Commission shall take into account the EBA report referred to in the preceding subparagraph when preparing any further delegated act pursuant to the empowerment in Article 460 of Regulation (EU) No 575/2013.;

(12) Article 21 is replaced by the following:

'Article 21

Netting of derivatives transactions

1. Credit institutions shall calculate liquidity outflows and inflows expected over a 30 calendar day period, for the contracts listed in Annex II to Regulation (EU) No 575/2013 and for credit derivatives, on a net basis by counterparty subject to the existence of bilateral netting agreements meeting the conditions laid down in Article 295 of that Regulation.

2. By way of derogation from paragraph 1, credit institutions shall calculate cash outflows and inflows arising from foreign currency derivative transactions that involve a full exchange of principal amounts on a simultaneous basis (or within the same day) on a net basis, even where those transactions are not covered by a bilateral netting agreement.

3. For the purposes of this Article, net basis shall be considered to be net of collateral to be posted or received in the next 30 calendar days. However, in the case of collateral to be received in the next 30 calendar days, net basis shall be considered to be net of that collateral only if both of the following conditions are met:

- (a) the collateral, when received, will qualify as a liquid asset under Title II of this Regulation;
- (b) the credit institution will be legally entitled and operationally able to reuse the collateral, when received.;

(13) Article 22 is amended as follows:

(a) in paragraph 2, points (a) and (b) are replaced by the following:

- '(a) the current outstanding amount for stable retail deposits and other retail deposits determined in accordance with Articles 24 and 25;
- (b) the current outstanding amounts of other liabilities that become due, can be called for pay-out by the issuer or by the provider of the funding or entail an expectation by the provider of the funding that the credit institution would repay the liability during the next 30 calendar days determined in accordance with Articles 27, 28 and 31a.;

(b) the following paragraph 3 is added:

'3. The calculation of liquidity outflows in accordance with paragraph 1 shall be subject to any netting of interdependent inflows that is approved under Article 26.;

(14) in Article 23, paragraph 1 is replaced by the following:

'1. Credit institutions shall regularly assess the likelihood and potential volume of liquidity outflows during 30 calendar days for products or services which are not referred to in Articles 27 to 31a and which they offer or sponsor or which potential purchasers would consider associated with them. Those products or services shall include, but not be limited to:

- (a) other off-balance-sheet and contingent funding obligations, including uncommitted funding facilities;
- (b) undrawn loans and advances to wholesale counterparties;
- (c) mortgage loans that have been agreed but not yet drawn down;
- (d) credit cards;
- (e) overdrafts;
- (f) planned outflows related to the renewal of existing retail or wholesale loans or the extension of new retail or wholesale loans;
- (g) derivative payables, other than the contracts listed in Annex II to Regulation (EU) No 575/2013 and credit derivatives;
- (h) trade finance off-balance-sheet related products.;

(15) in Article 25(2), point (b) is replaced by the following:

‘(b) the deposit is an internet access-only account;’;

(16) at the end of Article 26, the following paragraph is added:

‘Competent authorities shall inform the EBA which institutions benefit from the netting of outflows with interdependent inflows under this article. The EBA may request supporting documentation.’;

(17) Article 28 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

‘3. Credit institutions shall multiply liabilities maturing within 30 calendar days and resulting from secured lending or capital market-driven transactions, as defined in points (2) and (3) respectively of Article 192 of Regulation (EU) No 575/2013, by:

- (a) 0 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 10 of this Regulation as liquid assets of any of the categories of level 1 asset referred to in Article 10, with the exception of extremely high quality covered bonds referred to in point (f) of Article 10(1);
- (b) 7 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 10 of this Regulation as liquid assets of the category referred to in point (f) of Article 10(1);
- (c) 15 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 11 of this Regulation as liquid assets of any of the categories of level 2A asset referred to in Article 11;
- (d) 25 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 13 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (i), (ii) or (iv) of point (g) of Article 13(2);
- (e) 30 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 12 of this Regulation as liquid assets of the category of level 2B asset referred to in point (e) of Article 12(1);
- (f) 35 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 13 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (iii) or (v) of point (g) of Article 13(2);
- (g) 50 % where they are collateralised by assets that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 12 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (b), (c) or (f) of Article 12(1);
- (h) the percentage minimum haircut determined in accordance with paragraphs (2) and (3) of Article 15 of this Regulation where they are collateralised by shares or units in CIUs that, but for being used as collateral for those transactions, would qualify in accordance with Articles 7 and 15 as liquid assets of the same level as the underlying liquid assets;
- (i) 100 % where they are collateralised by assets that do not fall within any of points (a) to (h) of this subparagraph.

By way of derogation from the first subparagraph, where the counterparty to the secured lending or capital market-driven transaction is the domestic central bank of the credit institution, the outflow rate shall be 0 %. However, in cases where the transaction is done through a branch with the central bank of the Member State or of the third country in which the branch is located, a 0 % outflow rate shall be applied only if the branch has the same access to central bank liquidity, including during stress periods, as credit institutions incorporated in that Member State or third country have.

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

4. Collateral swaps, and other transactions with a similar form, that mature within the next 30 calendar days shall lead to an outflow where the asset borrowed is subject to a lower haircut under Chapter 2 than the asset lent. The outflow shall be calculated by multiplying the market value of the asset borrowed by the difference between the outflow rate applicable to the asset lent and the outflow rate applicable to the asset borrowed determined in accordance with the rates specified in paragraph 3. For the purposes of this calculation, a 100 % haircut shall be applied to assets that do not qualify as liquid assets.

By way of derogation from the first subparagraph, where the counterparty to the collateral swap or other transaction with a similar form is the domestic central bank of the credit institution, the outflow rate to be applied to the market value of the asset borrowed shall be 0 %. However, in cases where the transaction is done through a branch with the central bank of the Member State or of the third country in which the branch is located, a 0 % outflow rate shall be applied only if the branch has the same access to central bank liquidity, including during stress periods, as credit institutions incorporated in that Member State or third country have.

By way of derogation from the first subparagraph, for collateral swaps or other transactions with a similar form that would require an outflow rate higher than 25 % under that first subparagraph, the outflow rate to be applied to the market value of the asset borrowed shall be 25 % where the counterparty is an eligible counterparty.;

(b) the following paragraphs 7, 8 and 9 are added:

7. Assets borrowed on an unsecured basis and maturing within the next 30 calendar days shall be assumed to run off in full, leading to a 100 % outflow of liquid assets, unless the credit institution owns the assets borrowed and the assets borrowed do not form part of the credit institution's liquidity buffer.

8. For the purposes of this Article, 'domestic central bank' means any of the following:

- (a) any Eurosystem central bank where the credit institution's home Member State has adopted the Euro as its currency;
- (b) the national central bank of the credit institution's home Member State where that Member State has not adopted the Euro as its currency;
- (c) the central bank of the third country in which the credit institution is incorporated.

9. For the purposes of this Article, 'eligible counterparty' means any of the following:

- (a) the central government, a public sector entity, a regional government or a local authority of the credit institution's home Member State;
- (b) the central government, a public sector entity, a regional government or a local authority of the Member State or of the third country in which the credit institution is incorporated for the transactions undertaken by that credit institution;
- (c) a multilateral development bank.

However, public sector entities, regional governments and local authorities shall only count as an eligible counterparty where they are assigned a risk weight of 20 % or lower in accordance with Article 115 or Article 116 of Regulation (EU) No 575/2013, as applicable.;

(18) in Article 29, paragraph 2 is amended as follows:

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

'(a) the liquidity provider and receiver will present a low liquidity risk profile after the application of the lower outflow rate being proposed under paragraph 1 and the application of the inflow rate referred to in point (c) of that paragraph.;

(b) point (c) is replaced by the following:

'(c) the liquidity risk profile of the liquidity receiver is taken into account adequately in the liquidity risk management of the liquidity provider.;

(19) Article 30 is amended as follows:

(a) paragraphs 2 to 5 are replaced by the following:

‘2. The credit institution shall calculate and notify to the competent authority an additional outflow for all contracts entered into, the contractual conditions of which lead, within 30 calendar days and following a material deterioration of the credit institution’s credit quality, to additional liquidity outflows or collateral needs. The credit institution shall notify the competent authority of that outflow no later than the submission of the reporting in accordance with Article 415 of Regulation (EU) No 575/2013. Where the competent authority considers that outflow to be material in relation to the potential liquidity outflows of the credit institution, it shall require the credit institution to add an additional outflow for those contracts corresponding to the additional collateral needs or cash outflows resulting from a material deterioration in the credit institution’s credit quality corresponding to a downgrade in its external credit assessment of at least three notches. The credit institution shall apply a 100 % outflow rate to those additional collateral or cash outflows. The credit institution shall regularly review the extent of this material deterioration in the light of what is relevant under the contracts that it has entered into and shall notify the result of its review to the competent authority.

3. The credit institution shall add an additional outflow corresponding to collateral needs that would result from the impact of an adverse market scenario on the credit institution’s derivatives transactions if material. This calculation shall be made in accordance with Commission Delegated Regulation (EU) 2017/208 (*).

4. Outflows and inflows expected over 30 calendar days from the contracts listed in Annex II to Regulation (EU) No 575/2013 and from credit derivatives shall be taken into account on a net basis in accordance with Article 21 of this Regulation. In the case of a net outflow, the credit institution shall multiply the result by a 100 % outflow rate. Credit institutions shall exclude from such calculations those liquidity requirements that result from the application of paragraphs 1, 2 and 3 of this Article.

5. Where the credit institution has a short position that is covered by an unsecured security borrowing, the credit institution shall add an additional outflow corresponding to 100 % of the market value of the securities or other assets sold short, unless the terms upon which the credit institution has borrowed them require their return only after 30 calendar days. Where the short position is covered by a collateralised securities financing transaction, the credit institution shall assume the short position will be maintained throughout the 30 calendar day period and will receive a 0 % outflow.

(*) Commission Delegated Regulation (EU) 2017/208 of 31 October 2016 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on an institution’s derivatives transactions (OJ L 33, 8.2.2017, p. 14).’;

(b) paragraph 7 is replaced by the following:

‘7. Deposits received as collateral shall not be considered as liabilities for the purposes of Article 24, 25, 27, 28 or 31a but shall be subject to the provisions of paragraphs 1 to 6 of this Article, where applicable. The amount of cash received exceeding the amount of cash received as collateral shall be treated as deposits in accordance with Article 24, 25, 27, 28 or 31a.’;

(c) paragraph 11 is deleted;

(d) paragraph 12 is replaced by the following:

‘12. In relation to the provision of prime brokerage services, where a credit institution has covered the short sales of a client by internally matching them with the assets of another client and the assets do not qualify as liquid assets, those transactions shall be subject to a 50 % outflow rate for the contingent obligation.’;

(20) Article 31 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. The undrawn committed amount of a liquidity facility that has been provided to an SSPE for the purpose of enabling that SSPE to purchase assets, other than securities, from clients that are not financial customers shall be multiplied by 10 % to the extent that it exceeds the amount of assets currently purchased from clients and where the maximum amount that can be drawn down is contractually limited to the amount of assets currently purchased.’;

(b) in paragraph 9, the second subparagraph is replaced by the following:

'By way of derogation from point (g) of Article 32(3), where those promotional loans are extended as pass through loans via another credit institution acting as an intermediary, a symmetric inflow and outflow may be applied by the credit institution acting as an intermediary. That inflow and outflow shall be calculated by applying to the undrawn committed credit or liquidity facility received and extended the rate that is applicable to that facility by virtue of the first subparagraph of this paragraph and respecting the conditions and requirements otherwise imposed in relation to it by this paragraph.'

(c) paragraph 10 is deleted;

(21) the following Article 31a is inserted:

'Article 31a

Outflows from liabilities and commitments not covered by other provisions of this Chapter

1. Credit institutions shall multiply by a 100 % outflow rate any liabilities that become due within 30 calendar days, except for the liabilities referred to in Articles 24 to 31.

2. Where the total of all contractual commitments to extend funding to non-financial customers within 30 calendar days, other than commitments referred to in Articles 24 to 31, exceeds the amount of inflows from those non-financial customers calculated in accordance with point (a) of Article 32(3), the excess shall be subject to a 100 % outflow rate. For the purposes of this paragraph, non-financial customers shall include, but not be limited to, natural persons, SMEs, corporates, sovereigns, multilateral development banks and public sector entities, and shall exclude financial customers and central banks.'

(22) Article 32 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. Credit institutions shall apply a 100 % inflow rate to inflows referred to in paragraph 1, including in particular the following inflows:

(a) monies due from central banks and financial customers with a residual maturity of no more than 30 calendar days;

(b) monies due from trade finance transactions referred to in point (b) of the second subparagraph of Article 162(3) of Regulation (EU) No 575/2013 with a residual maturity of no more than 30 calendar days;

(c) monies due from securities maturing within 30 calendar days;

(d) monies due from positions in major indexes of equity instruments, provided there is no double counting with liquid assets. Those monies shall include monies contractually due within 30 calendar days, such as cash dividends from those major indexes and cash due from those equity instruments sold but not yet settled, if they are not recognised as liquid assets in accordance with Title II.

3. By way of derogation from paragraph 2, the inflows set out in this paragraph shall be subject to the following requirements:

(a) monies due from non-financial customers with a residual maturity of no more than 30 calendar days, with the exception of monies due from those customers from trade finance transactions or maturing securities, shall be reduced for the purposes of principal payment by 50 % of their value. For the purposes of this point, the term "non-financial customers" shall have the same meaning as in Article 31a(2). However, credit institutions acting as intermediaries that have received a commitment as referred to in the second subparagraph of Article 31(9) from a credit institution set up and sponsored by the central or regional government of at least one Member State in order for them to disburse a promotional loan to a final recipient, or have received a similar commitment from a multilateral development bank or a public sector entity, may take an inflow into account up to the amount of the outflow that they apply to the corresponding commitment to extend those promotional loans;

- (b) monies due from secured lending and capital market-driven transactions, as defined in points (2) and (3) respectively of Article 192 of Regulation (EU) No 575/2013, with a residual maturity of no more than 30 calendar days shall be multiplied by:
- (i) 0 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 10 of this Regulation as liquid assets of any of the categories of level 1 asset referred to in Article 10, with the exception of extremely high quality covered bonds referred to in point (f) of Article 10(1);
 - (ii) 7 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 10 of this Regulation as liquid assets of the category referred to in point (f) of Article 10(1);
 - (iii) 15 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 11 of this Regulation as liquid assets of any of the categories of level 2A asset referred to in Article 11;
 - (iv) 25 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 13 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (i), (ii) or (iv) of point (g) of Article 13(2);
 - (v) 30 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 12 of this Regulation as liquid assets of the category of level 2B asset referred to in point (e) of Article 12(1);
 - (vi) 35 % where they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 13 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (iii) or (v) of point (g) of Article 13(2);
 - (vii) 50 % if they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 12 of this Regulation as liquid assets of any of the categories of level 2B asset referred to in point (b), (c) or (f) of Article 12(1);
 - (viii) the percentage minimum haircut determined in accordance with paragraphs (2) and (3) of Article 15 of this Regulation if they are collateralised by assets that, whether or not they are re-used in another transaction, would qualify in accordance with Articles 7 and 15 as shares or units in CIUs of the same level as the underlying liquid assets;
 - (ix) 100 % where they are collateralised by assets that do not fall within any of points (i) to (viii) of this point.

However, no inflow shall be recognised where the collateral is used by the credit institution to cover a short position in accordance with the second sentence of Article 30(5);

- (c) monies due from contractual margin loans maturing in the next 30 calendar days made against non-liquid assets collateral may receive a 50 % inflow rate. Those inflows may only be considered where the credit institution is not using the collateral it originally received against the loans to cover any short positions;
- (d) monies due that the credit institution owing those monies treats in accordance with Article 27, with the exception of deposits at the central institution referred to in Article 27(3), shall be multiplied by a corresponding symmetrical inflow rate. Where the corresponding rate cannot be established, a 5 % inflow rate shall be applied;
- (e) collateral swaps, and other transactions with a similar form that mature within 30 calendar days shall lead to an inflow where the asset lent is subject to a lower haircut under Chapter 2 than the asset borrowed. The inflow shall be calculated by multiplying the market value of the asset lent by the difference between the inflow rate applicable to the asset borrowed and the inflow rate applicable to the asset lent in accordance with the rates specified in point (b). For the purposes of this calculation, a 100 % haircut shall apply to assets that do not qualify as liquid assets;
- (f) where the collateral obtained through reverse repos, securities borrowings, collateral swaps, or other transactions with a similar form, maturing within 30 calendar days is used to cover short positions that can be extended beyond 30 calendar days, the credit institution shall assume that such reverse repos, securities borrowings, collateral swaps or other transactions with a similar form will be rolled-over and will

not give rise to any cash inflows reflecting the need to continue to cover the short position or to repurchase the relevant securities. Short positions shall include both instances where in a matched book the credit institution sold short a security outright as part of a trading or hedging strategy and instances where in a matched book the credit institution has borrowed a security for a given period and lent the security out for a longer period;

- (g) undrawn credit or liquidity facilities, including undrawn committed liquidity facilities from central banks, and other commitments received, other than those referred to in the second subparagraph of Article 31(9) and in Article 34, shall not be taken into account as an inflow;
- (h) monies due from securities issued by the credit institution itself or by a SSPE with which the credit institution has close links shall be taken into account on a net basis with an inflow rate applied on the basis of the inflow rate applicable to the underlying assets in accordance with this Article;
- (i) loans with an undefined contractual end date shall be taken into account with a 20 % inflow rate, provided that the contract allows the credit institution to withdraw or to request payment within 30 calendar days.;

(b) paragraph 5 is replaced by the following:

‘5. Outflows and inflows expected over 30 calendar days from the contracts listed in Annex II to Regulation (EU) No 575/2013 and from credit derivatives shall be calculated on a net basis in accordance with Article 21 and shall be multiplied by a 100 % inflow rate in the event of a net inflow.’;

(23) Article 34(2) is amended as follows:

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

‘(a) the liquidity provider and receiver will present a low liquidity risk profile after the application of the higher inflow rate being proposed under paragraph 1 and the application of the outflow rate referred to in point (c) of that paragraph.’;

(b) point (c) is replaced by the following:

‘(c) the liquidity risk profile of the liquidity receiver is taken into account adequately in the liquidity risk management of the liquidity provider.’;

(24) Annex I is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. “Excess liquid assets” amount: this amount shall be comprised of the components defined herein:

- (a) the adjusted non-covered bond level 1 asset amount, which shall be equal to the value post-haircuts of all level 1 liquid assets, excluding level 1 covered bonds, that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction;
- (b) the adjusted level 1 covered bond amount, which shall be equal to the value post-haircuts of all level 1 covered bonds that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction;
- (c) the adjusted level 2A asset amount, which shall be equal to the value post-haircuts of all level 2A assets that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction; and
- (d) the adjusted level 2B asset amount, which shall be equal to the value post-haircuts of all level 2B assets that would be held by the credit institution upon the unwind of any secured funding, secured lending or collateral swap transaction that matures within 30 calendar days from the calculation date and where the credit institution and the counterparty exchange liquid assets on at least one leg of the transaction.’;

(b) paragraph 5 is deleted.

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 30 April 2020.

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

Done at Brussels, 13 July 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1621**of 26 October 2018****amending Implementing Regulation (EU) 2016/2080 as regards the date of entry into storage of the skimmed milk powder sold by a tendering procedure**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,Having regard to Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage ⁽²⁾, and in particular Article 28 thereof,

Whereas:

- (1) In order to define the quantities of skimmed milk powder covered by the tendering procedure opened by Commission Implementing Regulation (EU) 2016/2080 ⁽³⁾, Article 1 of that Regulation lays down a time limit before which the skimmed milk powder must have entered into public storage.
- (2) Given the current situation on the milk and milk products market in terms of price recovery and the high level of intervention stocks, it is appropriate that an additional volume of skimmed milk powder is made available for sale by changing the date of entry into storage.
- (3) Implementing Regulation (EU) 2016/2080 should therefore be amended accordingly.
- (4) In order to make the skimmed milk powder available for sale without delay, this Regulation should enter into force on the day after its publication in the *Official Journal of the European Union*.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Implementing Regulation (EU) 2016/2080, the date of '1 July 2016' is replaced by '1 August 2016'.

*Article 2*This Regulation shall enter into force on the 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 all Member States.

Done at Brussels, 26 October 2018.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 206, 30.7.2016, p. 71.

⁽³⁾ Commission Implementing Regulation (EU) 2016/2080 of 25 November 2016 opening the sale of skimmed milk powder by a tendering procedure (OJ L 321, 29.11.2016, p. 45).

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2018/1622

of 29 October 2018

on the non-approval of certain active substances in biocidal products pursuant to Regulation (EU) No 528/2012 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 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular the third subparagraph of Article 89(1) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾, as amended by Delegated Regulation (EU) 2017/698 ⁽³⁾, establishes in its Annex II a list of active substance/product-type combinations included in the review programme of existing active substances in biocidal products on 3 February 2017.
- (2) For a number of active substance/product-type combinations included in that list, all the participants have withdrawn their support in a timely manner.
- (3) As regards some active substances generated in situ, the name of those active substances and their precursors which are supported in the review programme has been clarified in a more precise manner. This has led in certain cases to a redefinition of the active substance in accordance with Article 13 of Delegated Regulation (EU) No 1062/2014.
- (4) A notification was published inviting persons wishing to support those active substance/product-types combinations which have been redefined and currently not supported, including the generation in situ of the active substances for the product-types listed in Annex II to Delegated Regulation (EU) No 1062/2014, so that the role of participant may be taken over.
- (5) For some active substance/product-type combinations no notification has been submitted or a notification has been submitted and rejected pursuant to paragraphs 4 or 5 of Article 17 of Delegated Regulation (EU) No 1062/2014.
- (6) In accordance with Article 20 of Delegated Regulation (EU) No 1062/2014, those active substance/product-type combinations should not be approved for use in biocidal products.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The active substances listed in the Annex are not approved for the product-types indicated therein.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2017/698 of 3 February 2017 amending Delegated Regulation (EU) No 1062/2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 103, 19.4.2017, p. 1).

Article 2

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

Done at Brussels, 29 October 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Active substance/product type combinations not approved, including any nanomaterial forms:

- the generation in situ of the active substances for the product-types listed in Annex II to Delegated Regulation (EU) No 1062/2014, except when the active substance is generated from the precursor(s) mentioned in the entry of the table of that Annex for the concerned active substance/product-type combinations;
- the substance/product-type combinations listed in the table below, including any generation in situ of these substances using any precursor that is not mentioned in Annex II to Delegated Regulation (EU) No 1062/2014:

Entry Number in Annex II to Delegated Regulation (EU) No 1062/2014	Substance name	Rapporteur Member State	EC number	CAS number	Product-type(s)
60	Citric acid	BE	201-069-1	77-92-9	1
172	Cetylpyridinium Chloride	UK	204-593-9	123-03-5	2
195	Sodium 2-biphenylate	ES	205-055-6	132-27-4	1, 2, 3
288	N-(Dichlorofluoromethylthio)-N',N'-dimethyl-N-phenylsulfamide (Dichlofluamid)	UK	214-118-7	1085-98-9	7
365	Pyridine-2-thiol 1-oxide, sodium salt (Sodium pyriothione)	SE	223-296-5	3811-73-2	3
401	Silver	SE	231-131-3	7440-22-4	9
405	Sulphur dioxide	DE	231-195-2	7446-09-5	4
424	Sodium bromide	NL	231-599-9	7647-15-6	2, 11, 12
458	Ammonium sulphate	UK	231-984-1	7783-20-2	11,12
1016	Silver chloride	SE	232-033-3	7783-90-6	10, 11
515	Ammonium bromide	SE	235-183-8	12124-97-9	11, 12
526	Potassium 2-biphenylate	ES	237-243-9	13707-65-8	6, 9, 10, 13
529	Bromine chloride	NL	237-601-4	13863-41-7	11
541	Sodium p-chloro-m-cresolate	FR	239-825-8	15733-22-9	1, 2, 3, 6, 9, 13
609	Mixture of cis- and trans-p-menthane-3,8 diol (Citriodiol)	UK	Not available	Not available	19
620	Tetrakis(hydroxymethyl)phosphonium sulphate(2:1) (THPS)	MT	259-709-0	55566-30-8	2
673	Didecyldimethylammonium chloride (DDAC (C ₈₋₁₀))	IT	270-331-5	68424-95-3	5
785	6-(Phthalimido)peroxyhexanoic acid (PAP)	IT	410-850-8	128275-31-0	3, 4

Entry Number in Annex II to Delegated Regulation (EU) No 1062/2014	Substance name	Rapporteur Member State	EC number	CAS number	Product-type(s)
792	Tetrachlorodecaoxide complex (TCDO)	DE	420-970-2	92047-76-2	1
952	<i>Bacillus sphaericus</i> other than <i>Bacillus sphaericus</i> 2362, strain ABTS-1743	IT	Micro-organism	143447-72-7	18
955	<i>Bacillus thuringiensis subsp. israelensis</i> Serotype H14, other than strain AM65-52 and other than strain SA3A	IT	Micro-organism	Not available	18
957	<i>Bacillus subtilis</i>	DE	Micro-organism	Not available	3
939	Active Chlorine: manufactured by the reaction of hypochlorous acid and sodium hypochlorite produced <i>in situ</i>	SK	Mixture	Not available	2, 3, 4, 5, 11, 12
824	Silver zinc zeolite	SE	Not available	130328-20-0	5
1013	Silver copper zeolite	SE	Not available	130328-19-7	5
835	Esfenvalerate/(S)-.alpha.-Cyano-3-phenoxybenzyl (S)-2-(4-chlorophenyl)-3-methylbutyrate (Esfenvalerate)	PT	Plant protection product	66230-04-4	18

COMMISSION IMPLEMENTING DECISION (EU) 2018/1623**of 29 October 2018****pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on mosquitoes non-naturally infected with *Wolbachia* used for vector control purposes****(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 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) On 28 September 2017, France requested the Commission to decide whether bacteria of the genus *Wolbachia* ('the bacteria') or any preparation containing the bacteria to be inoculated into mosquitoes, and mosquitoes non-naturally infected with the bacteria ('the non-naturally infected mosquitoes') used for vector control purposes are biocidal products within the meaning of Article 3(1)(a) of Regulation (EU) No 528/2012 or treated articles within the meaning of Article 3(1)(l) of that Regulation or neither.
- (2) According to the information provided by France, these intracellular bacteria are transmitted vertically, maternally inherited and naturally present in around 40 % of arthropods. The infection of mosquitoes by the bacteria may reduce the ability of some mosquitoes to transmit certain pathogenic viruses and parasites by interfering with those pathogens within the mosquitoes, and promotes the reproduction of infected females mosquitoes and the spread of the bacteria in the mosquito population. Furthermore, since male mosquitoes infected with the bacteria are incompatible with local females, the introduction of those infected males in the target population reduces its potential for reproduction. Therefore, vector control campaigns are based on the release of non-naturally infected mosquitoes within a population of mosquitoes in order to control the population size and/or to reduce their ability to transmit certain pathogens to humans.
- (3) According to the information provided by France, not all species of mosquitoes or individuals within one species are naturally infected with the bacteria, or with a strain of the bacteria that is exploitable for the vector control purposes. Therefore, non-natural infections have to be carried out under laboratory conditions in order to create non-naturally infected mosquitoes with a suitable strain of the bacteria. That can be achieved by different infection techniques, including the inoculation of the bacteria into adult female mosquitoes or into the cytoplasm of mosquitoes' eggs.
- (4) For the purpose of the provisions in Article 3(3) of Regulation (EU) No 528/2012, it is therefore relevant to assess separately the status of the bacteria or any preparation containing the bacteria to be inoculated into mosquitoes and the status of the non-naturally infected mosquitoes, irrespectively of the infection technique used.
- (5) The bacteria are micro-organisms within the meaning of Article 3(1)(b) of Regulation (EU) No 528/2012
- (6) Mosquitoes are harmful organisms within the meaning of Article 3(1)(g) of Regulation (EU) No 528/2012, since they may have an unwanted presence or a detrimental effect on humans or animals.
- (7) The bacteria has an indirect action on the mosquitoes population, either by controlling its size or by reducing its ability to transmit certain pathogens, and should therefore be considered an active substance within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012.
- (8) Product-type 18, insecticides, acaricides and products to control other arthropods, as defined in Annex V to Regulation (EU) No 528/2012, includes products used for the control of arthropods, by means other than repulsion or attraction. Since the bacteria are inoculated into mosquitoes with the intention to exert a controlling effect on mosquitoes' populations, such use falls under the description of product-type 18.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

- (9) The bacteria or the preparation containing the bacteria is exerting a controlling effect on mosquitoes by other means than mere physical or mechanical action.
- (10) For the purposes of Article 3(1)(a) of Regulation (EU) No 528/2012, the bacteria or the preparation containing the bacteria should be considered a substance or a mixture, respectively, consisting of or containing an active substance. As a consequence, the bacteria or any preparation containing the bacteria, as it is supplied to the user carrying out the inoculation into mosquitoes, is a biocidal product within the meaning of the first indent of Article 3(1)(a) of Regulation (EU) No 528/2012 and falls within product-type 18.
- (11) Non-naturally infected mosquitoes are not micro-organisms within the meaning of Article 3(1)(b) of Regulation (EU) No 528/2012.
- (12) Non-naturally infected mosquitoes are not a substance or a mixture within the meaning of points 1 and 2 of Article 3, respectively, of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽¹⁾. Therefore, pursuant to points (a) and (b) of Article 3(2) of Regulation (EU) No 528/2012, they are neither a substance nor a mixture for the purposes of that Regulation.
- (13) As a consequence, non-naturally infected mosquitoes are not an active substance within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012. Therefore, non-naturally infected mosquitoes cannot be a biocidal product within the meaning of the first indent of Article 3(1)(a) of that Regulation.
- (14) Non-naturally infected mosquitoes are not articles within the meaning of Article 3(3) of Regulation (EC) No 1907/2006. Therefore, pursuant to Article 3(2)(c) of Regulation (EU) No 528/2012, they are not considered articles for the purposes of that Regulation. Consequently, the non-naturally infected mosquitoes cannot be considered treated articles within the meaning of Article 3(1)(l) of Regulation (EU) No 528/2012.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The bacteria of the genus *Wolbachia* or any preparation containing those bacteria used for the purpose of inoculating those bacteria into mosquitoes with the objective of creating non-naturally infected mosquitoes for vector control purposes shall be considered a biocidal product within the meaning of Article 3(1)(a) of Regulation (EU) No 528/2012.

Non-naturally infected mosquitoes, irrespectively of the infection technique used, shall be considered neither a biocidal product nor a treated article within the meaning of points (a) and (l) of Article 3(1), respectively, of Regulation (EU) No 528/2012.

Article 2

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

Done at Brussels, 29 October 2018.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

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