



## Cross-border liquidity waivers: an important step towards Banking Union

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The Banking Union remains a cornerstone project for European integration, yet it is effectively stalled. Despite progress in supervisory convergence and the establishment of a common resolution authority, the absence of a European Deposit Insurance Scheme (EDIS) and other key components has left the project incomplete. Data clearly shows a lack of meaningful advancement in recent years.

The current regulatory framework does allow for cross-border liquidity waivers inside banking groups, a step that could deliver economies of scale and move the EU closer to a genuine single market for financial services. The use of these waivers is one of the steps needed towards more integration, which will in turn help create the scale EU banks need to compete with global players. If the EU is serious about the competitiveness agenda, we believe it is important to properly implement the instruments already available within the existing framework.

For ING, as a pan-European bank active across the EU, both in retail and wholesale, further development towards a European Banking Union is of key importance. For the EU, this is a key path to unleash the untapped benefits of the EU's single market. The ECB estimates trapped liquidity to be around EUR 250bn in the Eurozone<sup>1</sup>.

Whilst completing the Banking Union is a multifaceted agenda, this paper focuses exclusively on the free flow of liquidity through the existing option of setting up cross-border liquidity subgroups between subsidiaries inside the same bank ("the C-SLS"). The CRR and the ECB Guide on Options and Discretions set out a clear framework to use C-SLSs in alignment with existing requirements in European and local laws (e.g. large exposure rules, corporate interest). CRR Art. 8 sets the conditions on the establishment of a C-SLS, which allows local entities within a group to have a regulatory required minimum LCR/NSFR of 75% provided that the overall banking group manages the consolidated LCR/NSFR above 100%.

Despite being allowed since the inception of CRR in 2013, this option has not been used at scale by large cross-border groups. This is despite there being clear benefits from a liquidity perspective, and vocal encouragement by the ECB to make use of the option. We agree that making use of this option will advance the Banking Union.

The rationale for establishing intra-group liquidity waivers is twofold:

- (i) **In a business-as-usual situation, more efficiency can be achieved.** This is especially the case when the balance sheet dynamics differ between entities and where the surplus liquidity from one location compensates for the liquidity shortage in another. This could prevent so-called "repair costs" both at a local and central level. More efficient liquidity allocation also has the potential to increase overall financing capacity of a banking group.
- (ii) **Potential asymmetry shocks can be lowered,** as the surplus liquidity of one entity could compensate for the shortage of another and offers flexibility to execute contingency measures in different locations with a different investor base.

Crucially, we believe the current framework and safeguards are fit-for-purpose. Additional safeguards, especially if in the form of collateralised guarantees between entities, would render the concept of a liquidity subgroup useless in practice. The main reasons are that this would effectively trap another component of the balance sheet (non-HQLA, retained assets) and hamper centralised liquidity management, which allows banks to support its underlying entities in an effective way in times of stress.

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<sup>1</sup> Andrea Enria, How can we make the most of an incomplete banking union?, September 2021:  
<https://www.bankingsupervision.europa.eu/press/speeches/date/2021/html/ssm.sp210909~18c3f8d609.en.html>

## **Key element of Cross-border Single Liquidity Subgroups (“C-SLS”)**

In the below, we detail the key elements of establishing a cross-border liquidity subgroup based on CRR article 8 and subsequent guidance by, amongst others, the ECB. It assumes it would only include cross-border entities within the Banking Union.

### ***Legal safeguards for participating entities***

An important element of an C-SLS is the so-called Liquidity Support Agreement (LSA) between group and subsidiaries. The LSA, required by CRR art 8, details how liquidity would flow between entities in a crisis situation. At the same time, it also provides several safeguards for local entities to prevent an automatic transfer of liquidity to another group entity. In practical terms, an LSA would ensure the following:

1. The requesting entity has to be close to breaching the regulatory LCR/NSFR requirements of 75%. In going concern, the normal funding and liquidity framework continues to apply.
2. The requesting entity is deemed solvent. This needs to be evidenced through a solvency assessment.
3. The liquidity support cannot lead to a breach of large exposure limitations.
4. The support needs to be in line with corporate governance regulations (which may require approval from local decision-making bodies).
5. Local subsidiaries can only be requested to provide support if the higher level of consolidation is not able to meet the request in advance.

Legal enforceability of intra-group financial support agreement is sometimes questioned under national insolvency laws. This is why external legal opinions are required confirming the enforceability of the support arrangement for each affected jurisdiction. In line with CRR Art 8, the legal opinion has to confirm that there are no material practical or legal impediments that impede the working of the liquidity support agreement (LSA) in each national context. This means legal opinions for each impacted jurisdiction have to be prepared as part of a C-SLS submission.

### ***Risk management: the “RAS” framework***

In our view, it would be better to gradually make use of the opportunities provided by the C-SLS framework. This could be done by applying voluntary additional prudential safeguards on top of the minimum requirements. This ensures that risks are prudently managed both at group and local level and respect the local fiduciary responsibilities, while allowing for a more unified and efficient management of liquidity among the constituting entities. Practically, this would translate into changes of the bank's Internal Risk Appetite Statements (RAS) – which detail the banks' risk appetite - related to (amongst others) LCR and NSFR regulatory requirements. Following a decrease in regulatory requirements due to the application of the C-SLS, an option could be to set the cascading LCR and NSFR limits for all C-SLS entities a higher limit than required. This could be complemented by a local limit higher than the 75% minimum LCR/NSFR requirement (e.g. a 100% limit – which corresponds with the statutory limit – used as a steering threshold for internal purposes).

### ***Funding and Liquidity Management***

F&L management within the C-SLS would also allow for a more optimal usage of available stable funding and liquidity throughout a pan-European bank and increase its financing capacity to the real economy, as this is currently constrained by local LCR buffers. In particular, when the implementation of a C-SLS would be combined with removing intragroup large exposure limits (currently a patchwork of national laws). The resulting (increased) available versus required stable funding would be determined via the regular update of the bank's Capital and Funding Plan that already includes the C-SLS entities. The execution of the funding plan will also follow the current centralised funding model, taking into account any agreed intragroup funding constructions such as retained covered bond or RMBS and ensuring alignment with Single Point of Entry Resolution strategy of the participating entities. Liquidity management dry runs could

evidence that LCR monitoring and forecasting capabilities of the C-SLS entities are sufficient for this purpose.

### **Corporate governance**

We believe the guiding principle for corporate governance should be to embed the governance structure of the C-SLS within the existing structure of a banking group. This means governance is embedded within the banks' body already responsible for funding and liquidity (F&L) at the highest level of consolidation. Responsible bodies at subsidiary level are and will continue to be responsible for adhering to all internal and external requirements that apply to their level.

### **Economic benefits of cross-border liquidity flows**

Although the C-SLS's main appeal is the operational flexibility it provides (i.e. avoiding burdensome and unnecessary cash transfers across entities, with no economic justification other than compliance with local liquidity ratios), it could also lead to significant economic benefits for the bank and its customers. The free cross-border circulation of liquidity across group subsidiaries would improve access to credit by businesses and households in member states where domestic deposits are insufficient to finance growth and would foster convergence in borrowing costs across member states. This would be a major step toward a more unified, cheaper and more abundant access to credit for all businesses and citizens.

The economic benefits depend on the balance sheet dynamics of the different entities, meaning that the benefits will vary across entities, over time, and at consolidated level. In order to get insights into the potential economic benefits of a C-SLS, ING has conducted various analyses. Based on characteristics of the balance sheet in the period 2023-2025, ING estimates around EUR 15 bln of liquidity could have been unlocked from ING's Banking Union subsidiaries. This is based on the assumption that a local 100% LCR and NSFR would have been maintained instead of moving to the regulatory minimum of 75% as per CRR art 8.

In this counterfactual, this EUR 15bn in excess liquidity could have been offloaded from the balance sheet by reducing outstanding commercial paper issuance (which would have led to a cost reduction of EUR 25mn) or used to fund additional lending assets roughly equivalent to the liquidity unlocked (which would have generated additional income of EUR 175mn at average lending margins), or a combination of both.

Such analyses provide insights into the potential benefits of a C-SLS for different balance sheet dynamics. The ECB estimates EUR 250bn of liquidity is trapped inside the Banking Union, which could be largely unlocked by the systemic use of liquidity waivers. As liquidity is becoming increasingly scarce, mainly due to the end of QE, and credit demand should be to increase as the EU implements its competitiveness agenda, liquidity waivers would allow banks to better use existing funding to ensure credit flowing to the economy across the Banking Union.

### **Recommendations for future use of C-SLS framework**

We believe that the current safeguards in Article 8 of the CRR remain fit for purpose. However, there are some ways through which application can be facilitated.

- **Consider prudent application of C-SLS mechanism** - The minimum requirements in terms of meeting LCR and NSFR at the local level could be supplemented with a banks' own risk framework. Crucially, in the early stages of the C-SLS, higher steering thresholds (i.e. 100%) for the LCR and NSFR at local level could be put in place, which supersedes the 75% minimum requirement set by the CRR. Over time, as the new model has proved itself and as a result confidence with (local) authorities has been built, these limits could gradually evolve to 75% to further increase efficiency.
- **Smoothen the application process** - CRR Article 8 sets clear requirements for a C-SLS to be approved (art 21 of CRR). Efforts should be made to simplify and shorten this process. To obtain a C-

SLS waiver, banks must provide legal opinions confirming enforceability of support agreements and obtain explicit consent from all relevant national competent authorities. These requirements are often time-consuming and politically sensitive, making waivers difficult to secure. Decisions should be made by the individual bank's competent authority alone.

- **Focus on harmonisation** - National discretions, including a national discretion to set different large exposure limits for intragroup exposures hamper efforts to improve intra-group efficiencies. National options under the CRR will expire at the end of 2028 and will be replaced by a new regime, or by the currently applicable default option of national authorities (partially) waiving intragroup large exposure limits. We believe that the clearest approach would be to exempt intragroup exposure limits within the banking union from the large exposure limits. Alternatively, national authorities should set general guidance as to when limits can be waived.