EBA/GL/2022/10

29 July 2022

Final report

Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033

Contents

1. Executive Summary

Regulation (EU) 2019/2033 (IFR) introduces mandatory liquidity requirements for all investment firms. However, under Article 43(1) of the IFR, small and non-interconnected investment firms that meet the conditions set out in Article 12(1) of that regulation may be exempted from liquidity requirements by their competent authority.

These guidelines are developed in accordance with the mandate set out in Article 43(4) of the IFR and specify the criteria under which competent authorities may exempt small and non-interconnected investment firms from liquidity requirements. The guidelines contain three main elements:

- the set of investment services and activities provided by investment firms which are eligible for the exemption;
- the criteria for the exemption;
- guidance for competent authorities when granting and withdrawing an exemption.

These guidelines specify the set of investment services and activities that are provided by an investment firm to be eligible for the exemption from liquidity requirements. The guidelines also specify that competent authorities should have due consideration for ancillary services provided by an investment firm as well as for on and off-balance-sheet positions, whereas such services or positions may give rise to liquidity risk. Therefore, investment firms providing services such as granting credit or loans or engaging in securities lending transactions, or having certain off-balance-sheet positions, should be precluded from being exempted especially when holding such positions at a significant scale.

Small and non-interconnected investment firms do not hold clients' assets, thus liquidity requirements for such firms do not intend to cover risks of potential losses of clients' assets. Nonetheless the liquidity requirements set out in the IFR ensure that an investment firm maintains a sufficient level of liquid assets for its potential orderly wind-down. Therefore, the guidelines specify that the exemption should be based on the assessment of liquidity needs also taking into account an orderly wind-down of the investment firm.

Furthermore, in order to apply the exemption in a uniform way across the Union, the guidelines provide general guidance for the competent authorities on the process of withdrawing the exemption and an expected time frame for compliance with liquidity requirements after the exemption ceases to apply.

2. Background and rationale

2.1 Background

1. For the investment firms authorised under Directive 2014/65/EU (MiFID), Directive (EU) 2019/2034 (IFD) and Regulation (EU) 2019/2033 (IFR) introduce, for the first time, basic liquidity requirements that are harmonised for investment firms across the Union.

2. The IFR specifies the amount of liquid assets that an investment firm shall hold and their composition. In particular, in accordance with Article 43(1) of the IFR, an investment firm shall hold an amount of liquid assets equivalent to at least one third of its fixed overhead requirements. One reason for which the minimum liquidity requirement is set in this way is to ensure that an investment firm would be able to wind down or restructure its activities in an orderly manner in a given period ('wind-down period'). For a wind-down to be 'orderly', an investment firm should hold sufficient financial resources to withstand operational expenses over an appropriate period of time during which the investment firm still needs to continue its business and needs to be able to absorb losses which are not matched by a sufficient volume of revenues.

3. During the wind-down phase an investment firm should be able to progressively reduce its operations in an orderly way. However, that investment firm may not be able to convert its funds into liquidity or to convert them quickly enough in order to settle its claims. This creates the potential risk that the investment firm may still have sufficient own funds in the wind-down phase but not be able to settle its liabilities in a timely manner. This may ultimately lead to a collapse in a disorderly manner, which is then likely to cause damage to clients or markets.

4. Liquidity requirements set out in the IFD and IFR take into account the proportionality principle, ensuring that certain investment firms, which because of their size or the nature of their activities are not exposed to liquidity risk, can be exempted from the liquidity requirements. Such an exemption is subject to the permission of an investment firm's competent authority.

5. Article 43(4) of the IFR requires that the EBA, in consultation with ESMA, issues guidelines specifying further the criteria which the competent authorities may take into account when exempting investment firms from the liquidity requirement. Competent authorities can exempt only investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1).

6. In order to ensure that this exemption is applied in a uniform way across the Union, these guidelines set common criteria which competent authorities are expected to take into account when considering granting such exemptions.

2.2 Regulatory approach of the draft guidelines

7. Investment firms which meet the conditions set out in Article 12(1) of the IFR are not allowed to hold clients' assets or money, which cannot create situations of an investment firm being unable to return them to clients. Therefore, the liquidity requirements for these investment firms do not cover risks of potential losses of clients' money or assets.

8. Investment firms which meet the conditions for qualifying as a small and non-interconnected investment firm can provide a variety of investment services, including ancillary investment services as referred to in section B of Annex I of Directive 2014/65/EU (MiFID). These guidelines should specify which investment services may give rise to liquidity risk and therefore identify investment firms that should not be exempted from the IFR liquidity requirements because of the services they provide.

9. Some services may give rise to liquidity risk. For example, if an investment firm engages significantly in granting credits or loans to its clients, liquidity risk may arise from the credit risk with regard to borrowers' default. Loan default increases the liquidity risk because of the lowered cash inflow or any depreciation it triggers. Therefore, investment firms granting credits or loans (which is allowed as an ancillary service under MiFID) should not be exempted from liquidity requirements.

10. Another example would be 'placing of financial instruments without a firm commitment basis' as referred to in point (7) of Section A of Annex I of Directive 2014/65/EU. In order to be exempted, an investment firm should not use its account for the transaction of financial instruments for which it is providing this service. For the investment firm to be exempted, this service should be provided only as an offering or listing of financial instruments to the clients ('without a firm commitment basis').

11. Another situation where an investment firm's clients do not need to be protected by liquid assets occurs when portfolio management or investment advice was outsourced to the investment firm by another institution (e.g. another investment firm or an asset management company) so that the other institution can take its activity back in-house at any time.

12. Under the guidelines, investment firms operating a multilateral trading facility (MTF) or organised trading facilities (OTF) should not be exempted because of the peculiar role of these investment firms as trading venues.

13. In general, the assessment performed by the competent authority should have a long-term view, taking into account cash inflows and outflows and settlement of payments under ordinary conditions as well as financial resources needs under stressed conditions. Since certain conditions may increase an investment firm's liquidity needs, a competent authority should assess an investment firm's exposure to liquidity risk under normal as well as under stressed conditions.

14. The guidelines therefore indicate that an exemption may be granted only after the competent authority has assessed that the investment firm is not exposed to liquidity risks. Competent authorities should use all available information for such an assessment, including historical data, supervisory reporting data and information from previous on-site and off-site inspections. Competent authorities should consider the investment firm’s liquidity risk management framework and take due consideration of whether this sufficiently mitigates all liquidity risks.

3. Guidelines

EBA/GL/2022/10

29/07/2022

Guidelines

on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[1]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must make every effort to comply with the guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 28/11/2022. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2022/10'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.

4. In line with Article 16(3), the notifications will be published on the EBA website.

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

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify further the criteria which competent authorities may take into account when exempting investment firms referred to in Article 12(1) of Regulation (EU) 2019/2033 from liquidity requirements in accordance with Article 43 of Regulation (EU) 2019/2033.

Scope of application

6. These guidelines apply to investment firms on an individual basis within the scope set out in Article 43 of Regulation (EU) 2019/2033.

Addressees

7. These guidelines are addressed to competent authorities as defined in Article 4, points (2)(i) and (2)(viii) of Regulation (EU) No 1093/2010, and to financial institutions as referred to in Article 4, point (1) of Regulation (EU) No 1093/2010 that are investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

Definitions

8. Unless otherwise specified, terms used and defined in Directive (EU) 2019/2034 or Regulation (EU) 2019/2033 have the same meaning in the guidelines.

3. Implementation

Date of application

9. These guidelines apply from 28/11/2022.

4. Guidelines

4.1 General considerations

10. Competent authorities may exempt an investment firm which meets the conditions for qualifying as a small and non-interconnected investment firm as set out in Article 12(1) of Regulation (EU) 2019/2033 from the liquidity requirements set out in Article 43(1) of Regulation (EU) 2019/2033 where an investment firm fulfils the criteria for the exemption set out in these guidelines.

11. Where a competent authority has imposed specific liquidity requirements under Article 42 of Directive (EU) 2019/2034 on an investment firm, such an investment firm can be exempted from liquidity requirements only when it ceases to be subject to such specific liquidity requirements in accordance with Article 42 of Directive (EU) 2019/2034.

12. Competent authorities should exempt an investment firm from the liquidity requirements under Article 43(1) of Regulation (EU) 2019/2033 only based on an investment firm's request to be exempted. Together with such a request, the investment firm should provide all information necessary for the competent authority to assess if the requirements of these guidelines are met. That information should include a description of the investment firm's activity and how the investment firm fulfils the requirements for the exemption.

4.2 Investment firms eligible for the exemption

13. For the exemption from the liquidity requirements under Article 43(1) of Regulation (EU) 2019/2033, competent authorities should only consider investment firms that provide the following limited set of investment services:

    i) reception and transmission of orders in relation to one or more financial instruments as referred to in Annex I, Section A, point (1) of Directive 2014/65/EU;
    ii) execution of orders on behalf of clients as referred to in Annex I, Section A, point (2) of Directive 2014/65/EU;
    iii) portfolio management as referred to in Annex I, Section A, point (4) of Directive 2014/65/EU;
    iv) investment advice as referred to in Annex I, Section A, point (5) of Directive 2014/65/EU;
    v) placing of financial instruments without a firm commitment basis as referred to in Annex I, Section A, point (7) of Directive 2014/65/EU.

14. Competent authorities should consider whether ancillary services provided by an investment firm give rise to liquidity risk. An investment firm that engages in activities such

as granting credits or loans to an investor is exposed to higher liquidity risk and therefore such an investment firm should not be exempted from liquidity requirements.

15. Competent authorities should consider whether other services provided by an investment firm give rise to liquidity risk in providing guarantees to clients or third parties, as they are also subject to a higher liquidity requirement in accordance with Article 45 of Regulation (EU) 2019/2033. The same assessment should be performed for an investment firm which engages in securities lending, as an investment firm would be exposed to liquidity risk because the borrower may not be able to return securities in time or on demand to the investment firm.

16. Competent authorities should consider on and off-balance-sheet positions, including non-trading book derivative positions held for hedging purposes, when exempting an investment firm from liquidity requirements, as an investment firm holding significant amounts of such off-balance-sheet items could be exposed to material liquidity risk.

17. Competent authorities should not grant an exemption where an investment firm engages at significant scale in transactions in foreign currencies and the investment firm’s ability to swap currencies and its access to the relevant foreign exchange markets may be impaired under stressed conditions.

4.3 Criteria for the exemption

18. Competent authorities, after receiving a request from an investment firm, should assess whether that investment firm may be exempted from liquidity requirements based on the investment firm’s financial resources needs for an orderly wind-down or restructuring.

19. For the purpose of the assessment referred to in paragraph 18, competent authorities should take into account the investment firm’s risks to its clients and the firm itself, the nature, scope and complexity of its activities and the types of activities performed by the firm and, if available, any outcome of the supervisory review and evaluation carried out in accordance with Article 36 of Directive (EU) 2019/2034.

20. Competent authorities may exempt an investment firm which is providing portfolio management or investment advice on an ongoing basis when the investment firm manages assets which are delegated to it by other financial institutions.

21. The assessment of the needs for liquid financial resources should be performed both under normal conditions and under stressed conditions, which lead to an increased risk of mismatch between outflows and inflows, in particular with regard to payments related to off-balance-sheet positions or legal costs.

4.4 Information to be provided

22. For the purpose of the assessment for the exemption, competent authorities should use all relevant information, such as, where available: (i) regulatory reporting, (ii) accounting and financial reporting, (iii) the investment firm's internal accounts, (iv) ILAAP and ICAAP conclusions, (v) the investment firm's wind-down plans.

23. Competent authorities should request any additional information or evidence to ensure that the investment firm seeking the exemption is not exposed to liquidity risk.

24. In the event of a material change in the information submitted with the request for exemption, an investment firm should without delay resubmit the amended information.

4.5 Amendment and withdrawal of the exemption

25. Competent authorities should not grant an exemption to an investment firm if they consider that an investment firm does not comply with the criteria for an exemption at the time of the request or will likely not comply with the criteria subsequently.

26. Competent authorities should ensure that the investment firm informs the competent authority if there have been changes in the circumstances of the investment firm's activities which relate to compliance with the exemption criteria.

27. Competent authorities should withdraw the exemption if they consider that the investment firm no longer complies with the criteria for the exemption set out in these guidelines or if, at any stage, the competent authority considers it necessary for the investment firm that has already obtained an exemption to comply with the liquidity requirements due to potential future liquidity needs. Competent authorities should immediately notify the investment firm about the decision to withdraw the exemption.

28. Competent authorities should ensure that the investment firm complies with the liquidity requirements set out in Article 43(1) at the latest 90 days after the date of the notification of the competent authority's decision to revoke the exemption.

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

29. Article 43(4) of Regulation (EU) 2019/2033 (IFR) mandates the EBA, in consultation with ESMA, to issue guidelines specifying further the criteria which the competent authorities may take into account when exempting investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) from the liquidity requirements.

30. As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines (GL) and recommendations developed by the EBA shall be accompanied by an impact assessment (IA), which analyses the potential related costs and benefits.

31. This section presents the cost-benefit analysis of the provisions of the draft GL. The analysis provides an overview of the problem identified, the proposed options to address this problem and the potential impact of these options. Given the nature and the scope of the draft GL, the analysis is high-level and qualitative in nature.

A. Problem identification and baseline scenario

32. Until 26 June 2021, the prudential rules for investment firms were part of the wider EU prudential framework which applies to credit institutions, as set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU, also known as the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD), respectively.

33. The CRR/CRD did not impose harmonised EU-level liquidity requirements for all types of investment firms. Pursuant to paragraph 4 of Article 6 of the CRR, only investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC had to comply with the liquidity requirements on an individual basis if the competent authority did not exempt such investment firms from liquidity requirements on an individual basis taking into account the nature, scale and complexity of their activities. Investment firms with limited authorisation to provide investment services were not subject to liquidity requirements on an individual basis. Moreover, Article 11(3) of the CRR extended the exemption to liquidity requirements on a consolidated basis where the group comprises only investment firms. The justification behind these exemptions was due to the fact that the liquidity ratios were originally developed by the Basel Committee on Banking Supervision (BCBS) with a view to applying them to credit institutions and not to investment firms and without taking account of the specificities of the activities and services provided by investment firms. Finally, Article 105 of the CRD gave the power to competent authorities, following the supervisory review and

evaluation process, to impose specific liquidity requirements to capture liquidity risks to which an investment firm is or might be exposed.

34. On 26 June 2021, investment firms authorised under Directive 2014/65/EU became subject to a new prudential framework, composed of Regulation (EU) 2019/2033 and Directive (EU) 2019/2034, also known as the Investment Firms Regulation (IFR) and the Investment Firms Directive (IFD), respectively. With the application of the IFD/IFR, liquidity requirements became mandatory for investment firms unless the competent authority grants an exemption for the smallest investment firms.

35. Under Article 43 of the IFR, all investment firms are subject to the requirement to hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirement.

B. Policy objectives

36. Investment firms throughout the EU are an important element of a well-functioning capital market, due to their key role in efficient capital allocation. Adequate liquidity requirements are therefore necessary to meet any immediate or additional liquidity needs an investment firm may have (e. g. due to operational expenses, etc.), contributing to sound financial stability.

37. The specific objective of these draft guidelines is to establish common criteria which competent authorities should take into account when exempting investment firms from liquidity requirements. Generally, the draft guidelines aim to create a level playing field across the EU, as well as promote consistency of market practices and convergence of supervisory practices across competent authorities.

C. Options considered, assessment of the options and the preferred option

38. This section presents the main policy options discussed during the development of the guidelines, the costs and benefits of these options, as well as the retained preferred options.

Scope of the exemption

39. The EBA considered two policy options regarding the scope of the exemption criteria:

    Option 1a: the guidelines should provide a narrow list of exemption criteria

    Option 1b: the guidelines should provide a broad list of exemption criteria

40. Option 1a has been retained, because liquidity requirements under Article 43 of the IFR are not burdensome for investment firms to implement and the exemption should be granted only to a limited number of investment firms.

Providing the procedure for the exemption of an investment firm

41. The EBA considered two policy options regarding setting out the detailed procedure for competent authorities to grant the exemption:

    Option 2a: retain a neutral approach regarding the procedure for granting the exemption

    Option 2b: set out a detailed procedure for granting the exemption

42. Option 2a has been retained. Since these guidelines seek to harmonise exemption across the Union, some guidance on the process is also provided under these guidelines. However, this process is not detailed; concrete measures are left for each competent authority to decide. Besides, most competent authorities have their internal procedures for supervisory measures and a detailed process under these guidelines could conflict with their internal procedures.

D. Impact assessment (data collection)

43. Articles 10 and 16 of Regulation (EU) No 1093/2010 establishing the European Banking Authority (EBA), require the EBA to publish a cost-benefit analysis that will arise from the proposed rules from respectively regulatory technical standards (RTS) and guidelines.

44. In this context, a qualitative questionnaire, addressed to competent authorities supervising investment firms, was carried out for the purpose of assessing the impact of regulatory products which the EBA is required to develop based on Directive (EU) 2019/2034 (IFD), including the guidelines for investment firms' exemptions from liquidity requirements under Article 42(6) of that directive. A draft of these guidelines was published on December 10, 2021 for a 3-month consultation period. The results of this questionnaire complement the impact assessment already included in the consultation paper. The qualitative questionnaire addressed, among others, the following aspects: liquidity requirements before and after IFR, implementation costs for investment firms related to the introduction of the IFR and the implementation costs for competent authorities.

45. The additional information gathered through the questionnaire is now included in the EBA final report.

Main findings

46. The main finding of this analysis is that the introduction of these guidelines will have benefits in terms of harmonising the exemption process in the Union but comes with non-negligeable one-off costs for competent authorities and investment firms in the application process for the exemption. The benefits for the investment firms arise from the reduction of the ongoing cost from holding high-quality liquid assets to meet the requirements.

47. However, the level of granularity and the scope of the criteria to be assessed in granting the exemption (set out in these guidelines) may partially reduce the economic benefit of the exemption itself, especially considering the size of most small-and-non-interconnected investment firms.

Outcome of the qualitative questionnaire as baseline, impact of exemptions and role of the guidelines

48. It is not always possible to disentangle the impact due to the introduction of the liquidity requirements under the IFD/IFR from the impact of the exemptions and specifically the impact of these guidelines. Such analysis would have required a granular data collection, however the EBA has yet to set up a Union-wide regular collection of investment firms' supervisory data that could support a more detailed quantitative analysis of the cost-benefits for its regulatory products.

49. Therefore, in the analysis that follow, the impact of the introduction of the liquidity framework for investment firms introduced by the IFR is used as a baseline. The impact of these guidelines is then presented as the expected costs or benefits on top of this baseline.

50. **Baseline:** The results of the qualitative questionnaire show that most of the investment firms were not subject to liquidity requirements before the application of the IFR. Competent authorities have different expectations on the implementation costs for the investment firms, so that it cannot be excluded that the impact may be significant.

51. **Exemption:** The possibility to exempt small-and-non interconnected investment firms introduce an element of proportionality in the liquidity requirements. Small investment firms providing simpler services may be expected to have very limited unexpected liquidity needs. That means that an exemption would have concrete benefits for the investment firms without increasing the risk in the financial system.

52. **Baseline:** Overall, the qualitative questionnaire suggests that the possible impact due to the introduction of the IFR is low to moderate. Furthermore, most competent authorities (68% of the answers) inform that the investment firms under their remit were not subject to liquidity requirements under local regulations before the date of application of the IFR. For the investment firms subject to liquidity requirements before the application of the IFR, the expectations of the competent authorities regarding the liquidity requirements after the entry into force of IFR are split and based on few answers (for 37% of the answers mention that the investment firms need to hold higher amount of liquidity; whereas 25% mention that investment firms need to hold lower amount of liquidity).

53. **Exemption:** Therefore, exemptions from the liquidity requirements are expected to provide relief for certain small-and-non-interconnected investment firms, but only to a limited extent, as the liquidity requirements do not seem to be particularly challenging for many investment firms.

54. **Guidelines:** These guidelines, not precluding the possibility of granting an exemption for most business models (within the limits of small-and-non interconnected investment firms), pose nonetheless certain constraints to the application process. On the one hand, the assessment has to be carried out by the competent authority based on information to be provided by the investment firm. This implies one-off costs for the competent authority and the investment firms together with some, much more limited, ongoing cost for maintaining and supervising the criteria laid out in the guidelines. Such costs could have been reduced, for example, with the guidelines imposing a categorical exclusion form the possibility of exemption in relation to certain MiFID services. One example, in this sense, is the exclusion of MTF and OTF from the possibility of obtaining an exemption. Such approach, however, is justified for trading facilities because of the special role as trading venues and it looks disproportionate to extend it to all other business models. In terms of costs, this means that MTF and OTF will not have the benefits of the exemption and will have to carry the ongoing costs of the IFR liquidity requirements.

Detailed cost-breakdown by area

55. **Baseline:** Respondent to the qualitative questionnaire provided expectations on the detailed sources of costs, both one-off and ongoing, that can be summarised as follows:

    a. The one-off costs encountered by competent authorities due to the implementation of the IFR, namely costs of training and consultancy are negligible, low, or moderate (76% of the answers). The IT and other costs are also low or moderate (respectively, 72% and 85% of the answers);

    b. The total cost of implementing the IFR is low or moderate for 80% of the answers. The level of costs encountered by competent authorities due the implementation of the IFR, compared to the costs encountered before the entry into force of IFR, shows the following: for several areas (such as business model analysis, governance arrangements and firm-wide controls, risk of unorderly wind-down, risks from ongoing activities and other risks), the level of costs encountered by competent authorities are negligible, low, or moderate (between 88% and 96% of the answers);

    c. Costs of training and consultancy, IT and Other Costs are negligible, low, or moderate. The level of costs encountered by competent authorities are also negligible, low, or moderate for the following areas: business model analysis, governance arrangements and firm-wide controls, risk of unorderly wind-down, risks from ongoing activities and other risks.

56. **Guidelines:** The breakdown of the costs presented above refers to the overall implementation of the liquidity requirements. However, the possibility of exemption comes with additional one-off and ongoing costs for both investment firms and competent authorities. The process of granting an exemption, as set out in these guidelines, implies that a competent authority would have to review all elements described in the guidelines

before granting or rejecting an exemption. Considering the moderate benefits for the applicants, these costs can actually be considered moderately high.

57. Similarly, the application for an exemption has a cost for the applicant, as the relevant documentation has to be provided. In order to ensure a proper degree of convergence, however, the guidelines prescribe that a competent authority assess a broad range of aspects in order to ensure that the exemption is granted only to investment firms that are not exposed to liquidity risks. Therefore, the level of granularity of the guidelines can increase the costs of implementing the exemptions foreseen in the IFD.

58. As an indirect consequence, these additional costs may discourage investment firms from applying from an exemption, where these costs exceed the benefit of the exemption itself. Nonetheless, investment firms that face the costs for going through the exemption process, will observe a reduction in the ongoing cost of holding high-quality liquid assets over time.

5.2 Views of the Banking Stakeholder Group (BSG)

The Banking Stakeholder Group did not provide comments on this public consultation.

5.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 10 March 2022. Two responses were received, and both were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments, and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

Respondents seem to raise two main concerns. The first one is that the burden of going through the process to obtain the exemption from liquidity requirements may be excessive with respect to the benefits. As stated in the guidelines, however, competent authorities should only refer to documentation that is readily available at the investment firm and should not require documentation that is not already prescribed by the regulation.

A second concern is about limiting the services that do not preclude the exemption. For example, investment firms operating a trading facility (MTF or OTF) would not be eligible for exemption. However, the guidelines were designed assuming a narrow interpretation, as it is common opinion that the liquidity requirements prescribed in the IFR are not an excessive burden for most investment firms.

Summary of responses to the consultation and the EBA's analysis

Summary of responses received	EBA analysis	Amendments to the proposals
One respondent suggests that the exclusion of some investment firms from the possible exemption is not in line with the EBA's mandate set out in Article 43 (4) of the IFR as it contradicts the intention of the legislator generally to allow any 'small and non-interconnected' investment firm to be exempted regardless of the investment service it provides. The respondent therefore recommends removing the criteria in Section 4.2 'Investment firms eligible for the exemption', which lists the MiFID services that do not preclude obtaining an exemption from the liquidity requirements.	The IFD/IFR already preclude certain investment firms from obtaining an exemption from the liquidity requirements, for example all those that are not eligible for being categorised as 'small and non-interconnected' investment firms. Such an exclusion set out the legislators' intentions and is in line with the overall principle, stated in Recital 28 of the IFR, that all investment firms should have internal procedures to monitor and manage their liquidity requirements. The exemption from liquidity requirements should have a narrow application, such that an investment firm can function in an orderly manner over time. One approach to limit the non-harmonised application of the exemption is to refer to the services provided by the investment firm and identify the ones that would not preclude the exemption.	The guidelines do not require any change.

Summary of responses received	EBA analysis	Amendments to the proposals
One respondent recommends not excluding MiFID services operating an MTF and operating an OTF from the list of services that do not preclude obtaining the exemption.	MTF and OTF should not be exempted from the liquidity requirements, even when they are small enough to fall into the category of Article 12(1) of the IFR (small and non-interconnected) because of their specific role as trading venues.	The guidelines do not require any change.
An assessment of an investment firm's needs for liquid financial resources both under normal and stressed conditions might jeopardise the IFR's target of simplifying the prudential framework for investment firms particularly under the consideration that only 'small and non-interconnected' investment firms are allowed to request the exemption under Article 43 (1) of the IFR.	It is not possible to provide a quantification of costs and benefits to this level of granularity as the 'small and non-interconnected' investment firms may have very distinct profiles justifying granting or rejecting the exemption. Within the framework set out in these guidelines, it can only be up to the competent authority to apply the review process proportionately to the firm's size and complexity.	The guidelines do not require any change.
The burden of providing competent authorities with the relevant information for assessing eligibility for the exemption should not exceed the benefits resulting from the potential exemption.	That is correct. Nonetheless before taking the responsibility to exempt an investment firm from the liquidity requirements, the competent authority should perform the minimum review envisaged by these guidelines, if nothing else in order to ensure a level playing field.	The guidelines do not require any change.

Summary of responses received	EBA analysis	Amendments to the proposals
While respondents generally consider the relevant information to be provided by investment firms to competent authorities for assessing whether an investment firm is exposed to liquidity risk as being appropriate and clear, they also noted that some relevant information will most probably not be available. An example would be the ILAAP and ICAAP conclusions mentioned in the guidelines.	The guidelines specifically state that such information should be used only if available. Competent authorities are not requested, under these guidelines, to expect investment firms to produce an ILAAP conclusion if they are not already doing so.	The guidelines do not require any change.
Although investment firms would be required to support resolution authorities in drafting those plans, investment firms will most likely not draft such plans prior to being requested to do so.	As per the previous comments, such plans are to be used only if they are available. The guidelines do require providing non-available information.	The guidelines do not require any change.
The terminology used in paragraph 23 referring to granting exemption if the investment firm is 'not exposed to liquidity risk' might be misleading. We recommend the EBA to consider rephrasing the wording '[…] to ensure that the respective investment firm's activities and services do not give rise to liquidity risk'.	It is not very clear what the proposal is, in particular, what the difference would be between the two texts.	The guidelines do not require any change.

Summary of responses received	EBA analysis	Amendments to the proposals
The reference in paragraph 7 of the draft guidelines to the definition of financial institutions in the EBA Delegated Regulation and the MiFID II definition of investment firms is not in line with the scope of the IFD. This would involve several entities which are not in scope of the IFD but provide MiFID services, such as credit institutions providing MiFID services.	The guidelines are addressed to competent authorities of investment firms that meet the conditions for qualifying as 'small and non-interconnected investment firms' as defined in Article 12(1) of Regulation (EU) 2019/2033. The guidelines are clear on this aspect and reflect the scope set out in the IFR.	The guidelines do not require any change.
On paragraph 20, the current wording gives the impression that investment advice of an ongoing nature may only be exempt if it is provided by way of delegation. Such a limited approach seems inappropriate because the investment service of investment advice per se does not entail increased liquidity needs.	Paragraph 20 of the guidelines allows a competent authority to exempt an investment firm providing portfolio management or investment advice on an ongoing basis when managing assets which are delegated by other financial institutions. This is in line with similar provisions of Article 17(2) of the IFR. Paragraph 20 of the guidelines does not limit the exemption exclusively to the cases where there is a delegation, otherwise that paragraph would have been presented as a constraint.	The guidelines do not require any change.
The requirement in paragraph 22 could be misunderstood to mean that all investment firms must have recovery/wind-	The guidelines, as proposed in the consultation paper, already mention that the information referred to in	The guidelines do not require any change.

Summary of responses received	EBA analysis	Amendments to the proposals
down plans in place, and available information on recovery action and governance arrangements should then be considered by competent authorities. According to Article 63 of the IFD, the scope of Directive 2014/59/EU (BRRD) and thereby the obligation to implement recovery plans is limited to certain investment firms.	paragraph 22 should be considered 'where available' and that applies to all items mentioned therein.	