

Brussels, 26.3.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 26.3.2021

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 45c(4) of Directive 2014/59/EU ('the Directive', 'BRRD') empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level for the purpose of setting minimum requirements for own funds and eligible liabilities under Article 45c(3) of the BRRD.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft regulatory standards whether to endorse the drafts submitted. The Commission may also endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the draft regulatory technical standards submitted to the Commission in accordance with Article 45c(4) of the Directive. A consultation paper was published on the EBA internet site on 24 July 2020, and the consultation closed on 24 October 2020. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them. Together with the draft regulatory technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft regulatory technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft regulatory technical standards submitted to the Commission. This analysis is available at this link¹.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act specify the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level for the purpose of setting minimum requirements for own funds and eligible liabilities under Article 45c(4) of the BRRD.

Article 1 of the regulatory technical standards provides the parameters under which additional own funds requirement should be estimated and the methodology to do so.

Article 2 of the regulatory technical standards provides for the methodology to adjust the estimated additional own funds requirements.

¹ <https://www.eba.europa.eu/calendar/consultation-paper-draft-regulatory-technical-standards-rts-methodology-estimate-p2-and-cbr>

Article 3 of the regulatory technical standards provides for a methodology to estimate the combined buffer requirement.

Article 4 of the regulatory technical standards provides for a date of entry into force and application of the relevant provisions.

COMMISSION DELEGATED REGULATION (EU) .../...

of 26.03.2021

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012,² and in particular Article 45c(4) thereof,

Whereas:

- (1) The additional own funds requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council³ and the combined buffer requirement defined in Article 128, first subparagraph, point (6), of that Directive are inputs to calculate the loss absorption and recapitalisation amounts set out in Article 45c(3) of Directive 2014/59/EU. Those requirements are to be used by resolution authorities to set the minimum requirement for own funds and eligible liabilities (MREL) referred to in Article 45(1) of that Directive.
- (2) According to Article 45e(1) of Directive 2014/59/EU, resolution entities are to comply with MREL on a consolidated basis at the level of the resolution group. A resolution group as defined in Article 2(1), (83b) of Directive 2014/59/EU may not always be identical to a group as defined in Article 2(1), point (26) of that Directive, in particular when such a group is composed of more than one resolution group. According to Article 11 of Regulation (EU) No 575/2013⁴, the additional own funds requirement and the combined buffer requirement apply to the Union parent institution at the group consolidated level. Those requirements, however, might not apply to the resolution entity at the resolution group consolidated level because the resolution group might

² OJ L 173, 12.6.2014, p. 190.

³ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment funds, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁴ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

not cover the entire group. It is therefore necessary to specify a methodology for estimating those requirements for that situation.

- (3) The circumstance that the total risk exposure amount of a resolution group represents almost the entirety of the risk exposure amount of a group is an indication that the risks or elements of risk present in that resolution group do not materially differ from those present in the group. In that case, the resolution authority should use the additional own funds requirement applying to the Union parent institution at the group consolidated level as an estimation of the additional own funds requirement when determining the MREL applying to the resolution entity at the resolution group consolidated level.
- (4) Likewise, the circumstance that the total risk exposure amount of a resolution group can almost entirely be attributed to one entity of that resolution group is an indication that the risks or elements of risk present in that resolution group do not materially differ from those present in that entity of the resolution group. Accordingly, where the total risk exposure amount of the resolution group does not differ significantly from that of the largest entity of that resolution group, the resolution authority should use the additional own funds requirement of that largest entity as an estimation of the additional own funds requirement when determining the MREL for the resolution entity at the resolution group consolidated level.
- (5) Where a resolution group is more complex and its specificities cannot be fully captured by mirroring the additional own funds requirement applying either to the Union parent institution at the group consolidated level or to the largest entity of the resolution group, resolution authorities should use different estimations for the additional own funds requirement of the resolution entity at the resolution group consolidated level. Where the additional own funds requirement applying to the Union parent institution at the group consolidated level is higher than the additional own funds requirement of each entity of the resolution group, the additional own funds requirement applying to the Union parent institution at the group consolidated level should serve as a basis for estimating the additional own funds requirement of the resolution entity at the resolution group consolidated level. In that case, resolution authorities should, on the basis of information provided by the competent authority, seek to adjust that estimation to reflect the specific risks of the resolution group compared with the risks of the Union parent institution at the group consolidated level. That adjustment should take into account that some risks of the resolution group may not be present in other entities of the group that are not part of the resolution group or that some risks that are present in those entities of the group are not present in the resolution group itself.
- (6) The circumstance that one or more individual requirements within the resolution group are higher than the additional own funds requirement applying to the Union parent institution at the group consolidated level is an indication of idiosyncratic risks or elements of risk within the resolution group. Those idiosyncratic risks or elements of risk may be less important when considered across the group at consolidated level, for example because they may be offset by countervailing risk factors outside the resolution group. To estimate the additional own funds requirement of the resolution entity at the resolution group consolidated level, the resolution authority should, therefore, whenever this circumstance occurs, compare an estimation based on adjustments to the additional own funds requirement applying to the Union parent institution at the group consolidated level with an estimation based on a weighted average of the additional own funds requirements of all entities of the resolution

group. The resolution authority should use the estimation that delivers the higher requirement as an input for determining the MREL for the resolution entity at the resolution group consolidated level.

- (7) To estimate the additional own funds requirement of the resolution entity at the resolution group consolidated level for more complex groups, resolution authorities should, where possible, on the basis of information provided by the competent authority, adjust the additional own funds requirement of the Union parent institution at the group consolidated level to reflect that some risks or elements of risk covered by that additional own funds requirement are not relevant to the resolution group concerned, for instance because of their nature or geographical location. Resolution authorities should also, where possible, on the basis of information provided by the competent authority, make adjustments to that requirement to take into account that some risks or elements of risk of the resolution group are not fully reflected in that requirement or are netted within it, but are nevertheless relevant to the resolution group. All adjustments should be based on information provided by the relevant competent authorities, where available, since those authorities are responsible for estimating the ongoing risks to which entities of a group are exposed. Where such adjustments are not possible, the resolution authority should use the unadjusted additional own funds requirement of the Union parent institution at the group consolidated level to estimate the additional own funds requirements of the resolution entity at the resolution group consolidated level.
- (8) The capital conservation buffer rate does not vary across institutions. That rate should therefore be used as an estimation of the capital conservation buffer of the resolution entity at the resolution group consolidated level.
- (9) In order to reflect the planned structure of the group after the implementation of the preferred resolution strategy, buffer requirements aimed at addressing systemic risk, namely, the global systemically important institution buffer, other systemically important institution buffer and the systemic risk buffer, should by default be deemed to be identical to the requirements set for the entity that is the closest, in terms of total risk exposure amount, to the resolution group.
- (10) According to Article 45c(3), first subparagraph, point (a), point (ii), of Directive 2014/59/EU, the recapitalisation amount is the amount that allows the resolution group resulting from resolution to restore compliance with, among other requirements, the additional own funds requirement at the consolidated resolution group level after the implementation of the preferred resolution strategy. According to Article 45c(3), seventh subparagraph, of Directive 2014/59/EU, the amount necessary to ensure that, following resolution, the resolution entity is able to sustain sufficient market confidence for an appropriate period is to be equal to the combined buffer requirement that is to apply after the application of the resolution tools less the countercyclical capital buffer. The recapitalisation amount, including the amount required to sustain market confidence, is a part of the MREL and may be adjusted downwards or upwards under paragraphs 3 and 7 of Article 45c of Directive 2014/59/EU to reflect the changes to the resolution group after the application of the resolution tools. Accordingly, only the additional own funds and combined buffer requirements applied to the resolution entity at the resolution group consolidated level that are used to calibrate the MREL should be estimated. That estimation should, however, be without prejudice to any adjustments to the recapitalisation amount, including the amount required to sustain market confidence, when setting the MREL under Directive 2014/59/EU.

- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (12) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁵,

HAS ADOPTED THIS REGULATION:

Article 1

Estimation of the additional own funds requirement

1. Where a resolution entity has not been subject to an additional own funds requirement as referred to in Article 104a of Directive 2013/36/EU at the resolution group consolidated level, resolution authorities shall estimate that requirement in accordance with paragraphs 2 to 7 for determining the minimum requirement for own funds and eligible liabilities (MREL) of the resolution entity at the resolution group consolidated level.
2. Where the total risk exposure amount of the resolution entity at the resolution group consolidated level differs by 5% or less from the total risk exposure amount of the Union parent institution at the group consolidated level, resolution authorities shall use the additional own funds requirement imposed on the Union parent institution at the group consolidated level as an estimation of that requirement for determining the MREL of the resolution entity at the resolution group consolidated level.
3. Resolution authorities shall use as an estimation of the additional own funds requirement of the resolution entity at the resolution group consolidated level the additional own funds requirement of the entity accounting for the largest proportion of the consolidated total risk exposure amount of the resolution group where all of the following applies:
 - (a) the total risk exposure amount of the resolution entity at the resolution group consolidated level differs by more than 5% from the total risk exposure amount of the Union parent institution at the group consolidated level;
 - (b) the total risk exposure amount of the resolution entity at the resolution group consolidated level is equal to, or differs by less than 5% from, the individual total risk exposure amount of the entity accounting for the largest proportion of the consolidated total risk exposure amount of the resolution group;
 - (c) the additional own funds requirement of the entity accounting for the largest proportion of the consolidated total risk exposure amount of the resolution group is greater than zero.
4. Where paragraphs 2 and 3 do not apply and none of the entities that are part of the resolution group are subject to a higher additional own funds requirement than the additional own funds requirement imposed on the Union parent institution at the group consolidated level, resolution authorities shall use as an estimation of the additional own funds requirement of the resolution entity at the resolution group

⁵ 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).

consolidated level the additional own funds requirement imposed on the Union parent institution at the group consolidated level, subject to the adjustments referred to in Article 2.

5. Where paragraphs 2 and 3 do not apply and one or more of the entities that are part of the resolution group are subject to a higher additional own funds requirement than the additional own funds requirement imposed on the Union parent institution at the group consolidated level, resolution authorities shall use as an estimation of the additional own funds requirement of the resolution entity at the resolution group consolidated level the higher of the following:
 - (a) the additional own funds requirement imposed on the Union parent institution at the group consolidated level subject to the adjustments referred to in Article 2;
 - (b) the sum of the products of the additional own funds requirements of the entities of the resolution group and the respective individual total risk exposure amounts of those entities divided by the sum of the individual total risk exposure amounts of those entities.
6. For the purposes of paragraph 5, point (b), where no additional own funds requirement has been imposed on an entity on an individual basis, the additional own funds requirement of that entity shall be zero.
7. For the purposes of this Article, the total risk exposure amount shall be calculated in accordance with paragraphs 3 and 4 of Article 92 of Regulation (EU) No 575/2013 and on an individual or consolidated basis, as applicable.

Article 2

Adjustments for the estimation of the additional own funds requirement

1. For the purposes of Article 1(4) and of Article 1(5), point (a), resolution authorities shall, based on information provided by the relevant competent authority, adjust their estimation of the additional own funds requirement of the resolution entity at the resolution group consolidated level in any of the following cases:
 - (a) some of the risks or elements of risk for the coverage of which the additional own funds requirement was imposed on the Union parent institution at the group consolidated level by the competent authority in accordance with Article 104a of Directive 2013/36/EU are not present in the resolution group concerned;
 - (b) some risks or elements of risk for the coverage of which no additional own funds requirement was imposed on the Union parent institution at the group consolidated level by the competent authority in accordance with Article 104a of Directive 2013/36/EU are present in that resolution group.
2. The adjustments referred to in paragraph 1 shall not be made where the resolution authority, after having consulted the competent authority and having taken into account the information provided by that competent authority, has assessed that there is no significant risk relating to entities or activities of the group that are not part of the resolution group.

Article 3

Methodology for the estimation of the combined buffer requirement of resolution entities

1. The estimation of the combined buffer requirement of the resolution entity at the resolution group consolidated level shall be the sum of the buffer requirements referred to in Article 129(1), paragraphs 4 and 5 of Article 131 and Article 133(4) of Directive 2013/36/EU, as applicable, as estimated in accordance with paragraphs 2 to 4 of this Article.
2. Resolution authorities shall use as an estimation of the capital conservation buffer requirement referred to in Article 129(1) of Directive 2013/36/EU for the resolution entity at the resolution group consolidated level the capital conservation buffer requirement imposed on the Union parent institution at the group consolidated level.
3. Where the resolution entity is also the Union parent undertaking, resolution authorities shall use as an estimation of the global systemically important institution (G-SII) buffer requirement referred to in Article 131(4) of Directive 2013/36/EU for the resolution entity at the resolution group consolidated level the G-SII buffer requirement imposed on the Union parent institution at the group consolidated level.
4. Resolution authorities shall use as an estimation of the other systemically important institution (O-SII) buffer requirement referred to in Article 131(5) of Directive 2013/36/EU for the resolution entity at the resolution group consolidated level the O-SII buffer requirement imposed on the Union parent institution at the group consolidated level. Where the O-SII buffer requirement has also been set at another level of consolidation than at the group level, resolution authorities shall use as an estimation of that requirement the O-SII buffer requirement set at the level of consolidation that is the closest, in terms of total risk exposure amount, to the resolution group.
5. Resolution authorities shall use as an estimation of the systemic risk buffer requirement referred to in Article 133(4) of Directive 2013/36/EU for the resolution entity at the consolidated resolution group level the systemic risk buffer requirement imposed on the Union parent institution at the group consolidated level. Where a systemic risk buffer has also been set at another level of consolidation than at the group level, resolution authorities shall use as an estimation of that requirement the systemic risk buffer requirement set at the level of consolidation that is closest, in terms of total risk exposure amount, to the resolution group.

Article 4

Entry into force

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

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

Done at Brussels, 26.03.2021

For the Commission
The President
Ursula VON DER LEYEN