



Brussels, 22.9.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 22.9.2021

supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying adjustments to the K-factor “daily trading flow” (K-DTF) coefficients

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 15 (5) subparagraph 3 read in conjunction with point (c) of Article 15(5) of Regulation (EU) 2019/2033 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts to specify adjustments to the K-DTF coefficients.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft 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 No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with point (c) of Article 15(5) of the Regulation. A consultation paper was published on the EBA internet site on 4 June 2020, and the consultation closed on 4 September 2020. Moreover, the EBA worked in consultation with European Securities and Markets Authority (ESMA), invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft 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 technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <https://eba.europa.eu/regulation-and-policy/investment-firms/regulatory-technical-standards-prudential-requirements-investment-firms>, pages 60-85 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft RTS specify adjustments to the K-factor 'daily trading flow' (K-DTF) coefficients in the event that, in stressed market condition K-DTF requirements seem overly restrictive and detrimental to financial stability. For this purpose, two formulae for the calculation of the adjusted coefficients have been provided for the two distinct cases of dealing in cash trades or in derivatives.

The draft RTS also specify that the periods of stressed market conditions relevant for the two calculations shall cover only those situations which are referred to in Article 6(2) of the Regulation (EU) 2017/578 and if they lead to an increase in trading volumes.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014¹, and in particular the third subparagraph of Article 15 (5) in conjunction with point (c) of Article 15(5) thereof,

Whereas:

- (1) The daily trading flow (DTF) is calculated based on the volume of transactions. Circumstances leading to higher trading volumes may therefore force investment firms dealing on own account, including market makers, to reduce their trading activities. This may lead to a risk of reduced market liquidity, with potential detriments to financial stability. Consequently, as a result of those circumstances, the K-DTF coefficients should be adjusted in a way that does not disincentivise trading activities. Where circumstances lead to lower trading volume, those considerations do not apply and therefore, the adjustments to the K-DTF coefficients should be based only on the trades volumes occurring during periods of high volatility.
- (2) If the K-DTF requirements in stressed market conditions are overly restrictive and detrimental to financial stability, the coefficient referred to in Article 15(2) of Regulation (EU) 2019/2033 should be adjusted to be smaller than the one provided in Table 1 of that Article, in order to avoid making the K-DTF a disincentive to trading.
- (3) Given that point (c) of Article 15(5) of Regulation (EU) 2019/2033 refers to stressed market conditions as referred to in Delegated Regulation (EU) 2017/578², the start and end time of the periods of stressed market conditions should be in line with Article 6(2) of Delegated Regulation (EU) 2017/578 on the identification of stressed market conditions by a trading venue.

¹ OJ L 314, 5.12.2019, p. 1.

² Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (OJ L 87, 31.3.2017, p. 183).

- (4) For the purposes of calculating the adjusted K-DTF, stressed market conditions should cover cases where short-term changes in trading volume and price have a significant impact for the calculation for the K-DTF. As stressed market conditions may last for an indeterminate period of time, including periods as short as a few minutes, the adjusted coefficients should be capable of reflecting the value of the daily trading flow that takes place during periods of any different duration.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority after having consulted the European Securities and Markets Authority.
- (6) 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 Council³,

HAS ADOPTED THIS REGULATION:

Article 1
Adjustments to the K-DTF coefficients

1. The adjustments to the K-DTF coefficients referred to in Table 1 of Article 15(2) of Regulation (EU) 2019/2033 shall in the event that in stressed market condition as referred to in Delegated Regulation (EU) 2017/578 the K-DTF requirements seem overly restrictive and detrimental to financial stability as referred to in point (c) of Article 15(5) of Regulation (EU) 2019/2033, be determined using the following formula:

- (a) for the coefficient of the K-DTF cash trades:

$$C_{adj} = C * (DTF_{excl} / DTF_{incl})$$

where:

C_{adj} = adjusted coefficient

C = coefficient in Table 1 of Article 15(2) of Regulation (EU) 2019/2033

DTF_{excl} = the DTF of cash trades measured in accordance with Article 33 of Regulation (EU) 2019/2033, excluding the value of any cash trade that occurred during a stressed market condition as referred to in Article 2; and

DTF_{incl} = the DTF of cash trades measured in accordance with Article 33 of Regulation (EU) 2019/2033, including the value of any cash trade that occurs during a stressed market condition as referred to in Article 2.

- (b) for the coefficient of the K-DTF derivatives:

$$C_{adj} = C * (DTF_{excl} / DTF_{incl})$$

where:

C_{adj} = adjusted coefficient

³ 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).

C = coefficient in Table 1 of Article 15(2) of Regulation (EU) 2019/2033

DTFexcl = the DTF of derivatives measured in accordance with Article 33 of Regulation (EU) 2019/2033, excluding the value of any derivatives trade that occurred during a stressed market condition as referred to in Article 2; and

DTFincl = the DTF of derivatives measured in accordance with Article 33 of Regulation (EU) 2019/2033, including the value of any derivatives trade that occurs during a stressed market condition as referred to in Article 2.

The calculation of DTFexcl shall include only the value of daily trading flow that relates to financial instruments or underlyings of financial instruments traded on a trading segment within the relevant trading venue during an event for which a stressed market condition has been deemed to occur by that trading venue.

Article 2

Period of stressed market condition

For the purposes of Article 1, an event of stressed market condition means a situation where the parameters referred to in Article 6(2) of Delegated Regulation (EU) 2017/578 are met and where those stressed market conditions lead to increased trading volumes.

The start and end time of an event of stressed market condition shall be the time which the trading venue has identified in accordance with Article 6(2) of Delegated Regulation (EU) 2017/578.

Article 3

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, 22.9.2021

For the Commission

The President

Ursula VON DER LEYEN