

Brussels, 16.8.2022  
C(2022) 5647 final

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

**of 16.8.2022**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying exotic underlyings and the instruments bearing residual risks for the purposes of the calculation of own funds requirements for residual risks**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 325u(5) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA) in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts to specify what an exotic underlying is and which instruments are instruments bearing residual risks for the purposes of Article 325u(2) of the Regulation.

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 Article 325u(2) of the Regulation. A consultation paper was published on the EBA internet site on 12 March 2021 and the consultation closed on 12 June 2021. Moreover, the EBA requested the 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://www.eba.europa.eu/regulation-and-policy/market-risk/regulatory-technical-standards-residual-risk-add>, pages 23-26 of the Final Report on the draft technical standards.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The final draft technical standards specify what an exotic underlying is and which instruments are instruments bearing residual risks, for the purpose of Article 325u(2) of the Regulation. In particular, the final draft technical standards specify that longevity risk, weather, natural disasters and future realised volatility should be considered as exotic underlyings. In addition, the final draft technical standards set out a non-exhaustive list of instruments bearing residual risks and a list of risks that, in themselves, do not constitute residual risks.

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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) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012<sup>1</sup>, and in particular Article 325u(5), fourth subparagraph, thereof,

Whereas:

- (1) The specification of instruments referencing an exotic underlying provided in Article 325u(2), point (a), of Regulation (EU) No 575/2013 is sufficiently clear to allow institutions to identify what an exotic underlying is for the purposes of the calculation of the own funds requirements for residual risks set out in Article 325u. Therefore, no further specification of the meaning of an exotic underlying is necessary.
- (2) In particular, longevity risk, weather, natural disasters and future realised volatility meet the specification of an exotic underlying, in line with the indication provided in the relevant international framework defined by the Basel Committee on Banking Supervision (BCBS).
- (3) The definition of instruments bearing residual risks provided for in Article 325u(2), point (b), of Regulation (EU) No 575/2013, is not sufficiently clear to allow institutions to identify certain instruments bearing residual risks. Therefore, a list of instruments bearing residual risks, albeit non-exhaustive, should be specified to ensure a certain degree of harmonisation and consistency in the treatment of instruments bearing those risks across the Union. The elements of such a list should be selected considering the relevant international BCBS framework. For other instruments with a presumption to bear residual risks, institutions should assess whether those instruments meet the definition set out in Article 325u(2), point (b), of that Regulation.
- (4) Given the non-standard nature of many of the instruments bearing residual risk, a non-exhaustive list of risks which should not in themselves trigger the inclusion of an instrument under the definition of instruments bearing residual risks should also be specified in order to provide greater legal certainty and transparency. However, institutions should assess whether an instrument exposed to those risks could still be considered as an instrument exposed to residual risk if the instrument meets one of the other conditions referred to in Article 325u(2) of Regulation (EU) No 575/2013.

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<sup>1</sup> OJ L 176, 27.6.2013, p. 1.

- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking 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 Council<sup>2</sup>.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### *Specification of exotic underlyings*

Longevity risk, weather, natural disasters and future realised volatility shall be considered as exotic underlyings for the purposes of Article 325u(2), point (a), of Regulation (EU) No 575/2013.

#### *Article 2*

##### *Specification of instruments bearing residual risks*

The instruments listed in the Annex to this Regulation shall be considered as instruments meeting the conditions set out in Article 325u(2) of Regulation (EU) No 575/2013 and constituting instruments bearing residual risks.

#### *Article 3*

##### *Specification of instruments without presumption of bearing residual risks*

An instrument shall not be considered as meeting the conditions set out in Article 325u(2), points (b)(i) and (ii) of Regulation (EU) No 575/2013 solely on the grounds that it bears one or more of the following risks:

- (a) risk arising from transactions where the delivery obligation can be fulfilled within a range of deliverable instruments and where the counterparty has the possibility to deliver the least valuable of those instruments;
- (b) risk of a change in the implied volatility of an instrument with optionality, relative to the implied volatility of other instruments with optionality with the same underlying and maturity, but different moneyness;
- (c) correlation risk arising from an index option, where the index meets the conditions set out in Article 325i(3) of Regulation (EU) No 575/2013;
- (d) correlation risk arising from an option in a collective investment undertaking tracking an index benchmark, where the tracking meets the conditions set out in Article 325j(2) of Regulation (EU) No 575/2013 and the index meets the conditions set out in Article 325i(3) of that Regulation;
- (e) dividend risk arising from a derivative instrument whose underlying does not consist solely of dividend payments.

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<sup>2</sup> 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, 15.12.2020, p. 12).

*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, 16.8.2022

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*