

Brussels, 24.11.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 24.11.2022

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the calculation of risk-weighted exposure amounts of collective investment undertakings under the mandate-based approach

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 132a(4) of Regulation (EU) No 575/2013 empowers the Commission to adopt, following the submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts to specify how institutions are to calculate the risk-weighted exposure amount referred to in Article 132a(2) of the Regulation where one or more of the inputs required for that calculation are not available.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission must decide within 3 months of receiving the draft standards whether to endorse the drafts submitted. It may also endorse the draft standards in part only, or with amendments, where the EU's interests so require, having regard to the specific procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

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 132a(4) of Regulation (EU) No 575/2013. A consultation paper was published on the EBA website on 16 December 2020, and the consultation closed on 16 March 2021. The EBA also invited its Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on the standards. No comments were received during the consultation period. Together with the draft regulatory technical standards, the EBA has submitted an explanation of the reasoning behind 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 assessment of the impact of the draft regulatory technical standards to the Commission, including its analysis of the costs and benefits. This analysis is available at <https://www.eba.europa.eu/regulation-and-policy/credit-risk/regulatory-technical-standards-calculation-risk-weighted-exposure-amounts-collective-investment>, pages 12-14 of the Final Draft Regulatory Technical Standards.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act specify how institutions are to calculate the risk-weighted exposure amount referred to in Article 132a(2) of Regulation (EU) No 575/2013, where one or more of the inputs required for that calculation are not available.

This delegated act clarifies the steps to be taken to calculate the exposure value of collective investment undertakings' (CIUs') derivative exposures where the underlying is unknown. It then sets out what to do in cases where the calculation of the exposure value to the counterparty credit risk of a netting set of CIUs' derivative exposures is needed. The proposed provisions follow closely the framework set out in Regulation (EU) No 575/2013 for counterparty credit risk.

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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 648/2012¹, and in particular Article 132a(4), third subparagraph, thereof,

Whereas:

- (1) In order to avoid undue variability in capital requirements across institutions, and to make the mandate-based approach operational in situations where there is insufficient information, it is necessary to specify the method for calculating the risk-weighted exposure amount for a collective investment undertaking (CIU) under the mandate-based approach for the cases where missing inputs do not allow for the computation of the risk weighted exposure amount. .
- (2) Where a CIU enters into derivative transactions and the underlyings of the derivatives or the underlying risk of the derivatives' positions are unknown, the replacement cost of the positions cannot be determined by institutions, therefore neither can their exposure value. In that case, institutions should base their calculations on the notional amount of a derivative's position, which would usually be known and would be the best indicator of the size of the position, therefore providing an approximation for the exposure value.
- (3) Where the CIU's mandate does not exclude entering into derivatives but does not include sufficient information to determine whether an underlying constitutes an on- or off-balance sheet exposure, it cannot be excluded that such an exposure is constituted. It is therefore necessary to include that exposure in the calculation of the risk-weighted exposure amounts of the CIU's exposures.
- (4) Where the mandate does not provide sufficient information about the exposure value of such position, it cannot be excluded that the exposure value is the full notional amount of the derivative position.
- (5) Where the mandate does not specify the notional amount of the derivative position, to ensure a sufficiently prudent approach, that amount should be derived from the maximum notional amount of derivatives allowed under the mandate.

¹ OJ L (176, 27.6.2013, p. 1).

- (6) Where the replacement costs or the potential future exposure for the purposes of calculating the exposure amount associated with counterparty credit risk are unknown, institutions should base their calculations on the sum of notional amounts of the transactions in the netting set, which would be the best available conservative estimate to allow for the use of the mandate-based approach.
- (7) There are cases in which it is not possible for institutions to ascertain the relevant netting sets for a certain type of derivative in the CIU, since there is no information available on the counterparties or on whether the transactions are subject to a legally enforceable bilateral netting arrangement referred to in Article 272, point (4), of Regulation (EU) No 575/2013. In those cases, institutions should assume that neither netting effects nor counterparty diversification exist for that type of derivative. Therefore, institutions should assume that the CIU has entered into a single derivative with the maximum notional amount allowed by the mandate for that type of derivative.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (9) 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 Council²,

HAS ADOPTED THIS REGULATION:

Article 1

Determination of the exposure value of a CIU's derivatives' positions where the underlying is unknown for the purposes of Article 132a(2) of Regulation (EU) No 575/2013

1. When applying the mandate-based approach in accordance with Article 132a(2) of Regulation (EU) No 575/2013, where the CIU's mandate does not exclude that the underlying of a CIU's derivative position constitutes an on- or off-balance sheet exposure, but the exposure value or, in the case of off-balance sheet exposures, the applicable percentage pursuant to Article 111 of Regulation (EU) No 575/2013, is unknown, institutions shall use the full notional amount of the derivative position as the exposure value for the calculation of the risk-weighted exposure amounts.
2. For the purposes of determining the exposure value as set out in paragraph 1, where the notional amount of the derivative positions is unknown, institutions shall use a conservative estimation based on the maximum notional amount of the derivatives allowed under a CIU's mandate as the exposure value.

Article 2

Calculation of the exposure values for the counterparty credit risk of a netting set of a CIU's derivatives' positions

1. When calculating the exposure value of a netting set for counterparty credit risk in accordance with the approaches set out in Part 3, Title II, Chapter 6, Sections 3, 4 or

² 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).

5, where relevant, of Regulation (EU) No 575/2013, institutions shall apply the following:

- (a) where the institution is not able to calculate the replacement cost of the netting set according to the relevant approach, due to missing inputs, that institution shall use the sum of notional amounts of all the derivatives in the netting set as the replacement cost;
 - (b) where the institution is not able to calculate the potential future exposure of the netting set according to the relevant approach, due to missing inputs, that institution shall replace it by 0,15 times the sum of notional amounts of all the derivatives in the netting set.
2. When calculating the exposure value for counterparty credit risk in accordance with paragraph 1, where the notional amount of the derivatives in the netting set is unknown, institutions shall use a conservative estimation based on the maximum notional amount of the derivatives allowed under a CIU's mandate to determine the exposure value of that netting set.
3. For the purposes of paragraphs 1 and 2 , where it is not possible for institutions to ascertain the relevant netting sets for a certain type of derivative in the CIU, they shall assume that the CIU has entered into a single derivative with the maximum notional amount permitted by the mandate for that type of derivative.

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, 24.11.2022

For the Commission

The President

Ursula VON DER LEYEN