



Brussels, 6.12.2023  
C(2023) 8289 final

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

**of 6.12.2023**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying in which circumstances the conditions for identifying groups of connected clients are met**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

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

Article 4(4) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following the submission of draft regulatory technical standards ('RTS') by the European Banking Authority ('EBA'), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts to specify in which circumstances the conditions set out in point (39) of Article 4 paragraph 1 of the Regulation to form a group of connected clients are met.

The definition of a group of connected clients in the Regulation makes it possible to identify two or more natural or legal persons who are so closely linked by idiosyncratic risk factors, that it is prudent to treat them as a single risk. Idiosyncratic risk arises where, because of the specific circumstances of bilateral interrelationships, the financial problems of one person are transferred to another person or persons that otherwise would not be directly concerned. Consequently, the purpose of these draft RTS is to set out clear circumstances where interconnections between clients by means of a control relationship and/or an economic dependency relationship lead to a single risk and thus a requirement to group those clients.

The draft RTS submitted to the Commission by the European Banking Authority builds upon the consistent approaches already developed in the existing EBA Guidelines 2017/15 of 14 November 2017 on connected clients. This draft RTS, together with the guidance for the alternative approach for exposures to central governments and for the control and management procedures for identifying clients that constitute a single risk included in the Guidelines, provide the complete framework for the identification of groups of connected clients.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receiving 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 EU'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 between 8 June 2022 and 8 September 2022, on the draft RTS submitted to the Commission in accordance with Article 4(4) of the Regulation. The EBA has 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.

As specifically requested by the Commission, only these draft RTS are submitted to the Commission for the adoption of the RTS. All relevant background information - in particular the background to and rationale for the draft RTS, the impact assessment and the feedback from the public consultation - is included in the final report accompanying these draft RTS, which was approved by the EBA's Board of Supervisors on 16 December 2022 and published on the EBA's public website.

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

The provisions of this delegated act specify the criteria for identifying two or more natural or legal persons who are so closely linked by idiosyncratic risk factors, that it is prudent to treat

them as a single risk. These draft RTS partially repeal and replace the [Guidelines on connected clients under Article 4\(1\)\(39\) of the Regulation](#).

Where a control relationship as defined in Article 4(1)(37) of the Regulation exists, the controlling person has legally enforceable rights that establish a strong form of financial dependency on the controlled person. If the controlling person has financial problems, it can be assumed that it will make use of its rights to extract capital and/or liquidity from the controlled person, thereby weakening the latter's financial position. Thus, financial problems can be transferred to the controlled person, with the result that both the controlling and controlled persons would experience financial problems. From the perspective of prudential risk stemming from exposures to clients, it is therefore appropriate to assume a single risk due to a relationship of control between different natural and/or legal persons.

When these legal persons are part of the same consolidated financial statements, the condition in Article 4(1), point (39)(a) of the Regulation is deemed to be met, even in the absence of exposures towards the natural or legal person that controls the group. Where no consolidated financial statements have to be prepared, these draft RTS provide a non-exhaustive list of circumstances of control criteria and control indicators to assess whether there is a parent-subsidiary or similar relationship between natural and/or legal persons. The two-segment list contains circumstances that always constitute a control relationship between natural and/or legal persons and indicators that should be considered by institutions in their assessment, as any of these circumstances might constitute a control relationship between natural and/or legal persons.

If the issue of control of one natural or legal person over another does not apply, institutions are obliged to assess whether there exists a relationship of economic dependency. If it is likely that the financial difficulties of one natural or legal person would spread to other(s), impacting full and timely repayment of liabilities, there exists an idiosyncratic risk that needs to be addressed by considering the natural and/or legal persons to be connected. In analysing economic dependencies, institutions should consider the non-exhaustive list of situations in Article 2(1) of these draft RTS.

These draft RTS also set out the provisions for assessing situations where control and economic dependencies co-exist within one group of connected clients in such a way that all relevant natural and/or legal persons constitute a single risk. This happens when a group of connected clients is first established on the basis of a control relationship, and successively enlarged by another natural and/or legal person or a second group of connected clients because of some form of economic dependency.

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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 648/2012,<sup>1</sup> and in particular Article 4 paragraph 4 thereof,

Whereas:

- (1) Identifying ‘groups of connected clients’ as defined in Article 4(1), point (39) of Regulation (EU) No 575/2013 should lead to the identification of natural or legal persons so closely linked by idiosyncratic risk factors that it is prudent to treat them as a single risk. Where it is unclear under which specific category of connections the interconnection between different persons should be classified, a general principle of prudence should prevail and it should be assumed that a single risk exists. Therefore, the circumstances under which the conditions for identifying groups of connected clients are met should be understood as non-exhaustive lists. Cases where natural or legal persons are only linked through their dependence to common geographical or sectoral external factors should not lead to a group of connected clients.
- (2) To clarify the circumstances under which the condition of control is met for the purposes of identifying the existence of a single risk, where two or more legal persons are part of the same financial consolidated statement, the condition of control should be deemed as met, even in the absence of exposures towards the controlling natural or legal person, because the domino effect of financial difficulties within a group may arise even though the institution has no exposure toward the controlling person.
- (3) Because a control relationship is not limited to persons that are part of the same consolidated group, it is necessary to lay down the circumstances in which a single risk between two or more natural or legal persons on the basis of control exists, even where consolidated financial statements are not being prepared, either because natural persons are involved, or because the legal persons are established in a third country or the legal regime applicable to those persons does not require financial consolidation. In particular, where the natural or legal person holds the majority of voting rights, or has the ability to appoint or remove the majority of the management body or exercises a dominant influence over another person, the conditions of control should be deemed as met.

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

- (4) Furthermore, it is necessary to specify further circumstances in which two or more natural or legal persons may constitute a single risk because one of them, directly or indirectly, has control over the other or others. In particular, where the natural or legal person has the right or ability to decide on the strategy or on important transactions of another person, or has the right or ability to coordinate the management of one or more legal persons, those circumstances should be considered as having a dominant influence and thus meeting the conditions for a single risk on the basis of control.
- (5) It is necessary to specify the circumstances that at least should be considered when assessing economic dependency for the purpose of determining a single risk. Economic dependency requires that the relationship between natural or legal persons has the potential to trigger funding or repayment difficulties and cannot be replaced in a timely manner without incurring excessive additional costs, i.e., costs or reduced revenues that could trigger repayment difficulties.
- (6) Furthermore, it is necessary to lay down the circumstances in which the conditions of control and economic dependency coexist. For that purpose, where two or more natural or legal persons constitute a single risk based on control and one or more of them are so closely interlinked and interdependent with another natural or legal person or persons that they are economically dependent, all those persons should constitute an overall single risk. When assessing the coexistence of control and economic dependency, institutions should consider each case separately, considering the possible connections based on individual circumstances. Where persons that are part of different control groups are also interconnected through economic dependency, all those persons should be grouped into one overall group of connected clients. Such a group should encompass the control group, any economically dependent person or persons and any person or persons being controlled by those economically dependent person or persons.
- (7) To take into account the possibility that the existence of exceptional circumstances might preclude the existence of a single risk, an institution should be able to present adequate evidence that two or more natural persons are not constituting a single risk, despite conditions for being considered as connected clients being met for those persons. In those cases, institutions may not identify those persons as a group of connected clients.
- (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 Council,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Control relationship*

1. Two or more natural or legal persons shall constitute a single risk because one of them, directly or indirectly, has control over the other or others where one of them is required to prepare consolidated financial statements that include the other or others in accordance with Article 22(1) and (2) of Directive 2013/34/EU of the European

Parliament and of the Council<sup>2</sup> or the International Financial Reporting Standard (IFRS) 10, as laid down in the national law of the respective Member State.

2. Paragraph 1 shall apply also to legal persons not included in the consolidated financial statements due to exemptions or derogations set out in Directive 2013/34/EU or the IFRS 10, as laid down in the national law of the respective Member State.
3. Where paragraph 1 does not apply, two or more natural or legal persons shall constitute a single risk because one of them, directly or indirectly, has control over the other or others, in the following circumstances:
  - (a) the natural or legal person holds the majority of the voting rights in another person or persons;
  - (b) the natural or legal person has the right or the ability to appoint or remove the majority of the members of the administrative, management or supervisory body of another person or persons;
  - (c) the natural or legal person is able to exercise dominant influence over another person or persons pursuant to a law or contract, or provisions in memoranda or articles of association.
4. Where paragraphs 1, 2 or 3 do not apply, two or more natural or legal persons may be deemed to constitute a single risk because one of them, directly or indirectly, has control over the other or others, in any of, but not limited to, the following circumstances:
  - (a) the natural or legal person has the right or ability to decide on the strategy or to direct the activities of another person or persons;
  - (b) the natural or legal person has the right or ability to decide on important transactions, including the transfer of profits or losses of another person or persons;
  - (c) the natural or legal person has the right or ability to coordinate the management of one or more legal persons.
5. By way of derogation from paragraphs 1, 2 and 3, where, in exceptional cases, an institution is able to demonstrate that no single risk prevails despite the circumstances referred to in those paragraphs being met with regard to two or more natural or legal persons, the institution may not identify those persons as a group of connected clients.

## *Article 2*

### *Economic dependency*

1. Two or more natural or legal persons constitute a single risk because they are interconnected in a way that, where one of them were to experience financial problems, in particular funding or repayment difficulties, the other, or the others would also be likely to encounter financial problems, in any of, but not limited to the following circumstances:

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<sup>2</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (a) where the insolvency or default of a natural or legal person is likely to result in the insolvency or default of another natural or legal person or persons;
- (b) where a natural or legal person has fully or partly guaranteed the exposure of another natural or legal person and the exposure is so significant for the guarantor that the guarantor is likely to experience financial problems if a claim occurs;
- (c) where a significant part of a natural or legal person's gross receipts or gross expenditures is derived from transactions with another natural or legal person that cannot be replaced in a timely manner without incurring excessive additional costs;
- (d) where a significant part of the goods produced or services offered by a natural or legal person is sold or supplied to another natural or legal person and that relationship cannot be replaced in a timely manner without incurring excessive additional costs;
- (e) where a significant part of the receivables or liabilities of a natural or legal person is to another natural or legal person;
- (f) where the expected source of funds to repay the loans of two or more natural or legal persons is the same and none of these persons has another independent source of income from which the loan may be serviced and fully repaid, and the expected source of funds cannot be replaced in a timely manner without incurring excessive additional costs;
- (g) where it is expected that the financial problems of one natural or legal person would cause difficulties for another natural or legal person to fully and timely repay its liabilities, because the persons are legally or contractually jointly liable to the institution;
- (h) where two or more natural or legal persons rely on the same source for the majority of their funding and, in the event of insolvency or default of that source of funding, that source of funding cannot be replaced in a timely manner without incurring excessive additional costs;
- (i) where two or more legal persons are managed on a unified basis as referred to in Article 22(7), point (a) of Directive 2013/34/EU;
- (j) where the management body of two or more legal persons consists for a major part of the same persons as referred to in Article 22(7), point (b) of Directive 2013/34/EU;
- (k) where the majority of voting rights in two or more legal persons is held by the same natural or legal persons.

2. By way of derogation from paragraph 1, where, in exceptional cases, an institution is able to demonstrate that no single risk prevails despite one or more of the circumstances referred to in that paragraph being met with regard to two or more natural or legal persons, the institution may not identify those persons as a group of connected clients.

*Article 3*  
*Combined control relationships and economic dependencies*

1. Three or more natural or legal persons shall constitute a single risk, where two or more of those persons constitute a single risk by means of control in accordance with Article 1 (control group) and one or more natural or legal persons are connected to one or more of the persons that are part of the control group by means of economic dependency in accordance with Article 2.
2. Where the person that is connected by means of economic dependency as referred to in paragraph 1 is part of another group of connected clients, all persons, either being controlled by that economically dependent person or being themselves economically dependent on that person, shall also constitute a single risk with the persons of the control group referred to in paragraph 1.
3. By way of derogation from paragraphs 1 and 2, where, in exceptional cases, an institution is able to demonstrate that no single risk prevails despite the circumstances referred to in those paragraphs being met with regard to three or more natural or legal persons, the institution may not identify those persons as a group of connected clients.

*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, 6.12.2023

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