



Brussels, 18.2.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 18.2.2016

correcting Delegated Regulation (EU) No 528/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach and correcting Delegated Regulation (EU) No 604/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The third subparagraph of Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) of Regulation (EU) No 575/2013 (the "CRR") empowers the Commission to adopt, following submission of draft technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying non-delta risk of options in the standardised market risk approach. This delegated act entered into force on 9 June 2014 (the "non-delta risk RTS").

Article 94(2) of Directive (EU) No 2013/36/EU (the "CRD") empowers the Commission to adopt, following submission of draft technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. This delegated act entered into force on 26 June 2014 (the "identified staff RTS").

The correcting delegated act is only intended to correct certain errors identified in the non-delta risk and identified staff RTSs. The corrections will ensure that the text of those RTSs duly reflects the intention of the text as originally intended by the EBA.

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 non-delta risk and identified staff RTSs originally submitted to the Commission in accordance with Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) of the CRR and with Article 94(2) of the CRD. Consultation papers were published on the EBA internet site on 21 May 2013 and 22 May 2013, and the consultations closed on 21 August 2013 and 17 July 2013, respectively. Moreover, the EBA 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 RTSs, the EBA submitted an explanation on how the outcome of these consultations was taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft RTSs and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. These analyses are available at <http://www.eba.europa.eu/documents/10180/529170/EBA+RTS+2013+13+%28Draft+final+RTS+on+non-delta+risks+for+option%29.pdf/3e82b633-2eb2-41d9-89ac-7b0c061412d6> and <http://www.eba.europa.eu/documents/10180/526386/EBA-RTS-2013-11+%28On+identified+staff%29.pdf/c313a671-269b-45be-a748-29e1c772ee0e>.

The EBA has not consulted on or carried out a cost/benefit analysis of the draft correcting delegated act since to do so would be disproportionate relative to its narrow purpose.

3. LEGAL ELEMENTS OF THE CORRECTING DELEGATED ACT

3.1 Correction of the non-delta risk RTS (Article 1 of the Correcting Delegated Act)

The non-delta risk RTS falls within the scope of the standardised approach for market risk in the CRR which requires institutions (banks and investment firms) to calculate regulatory capital requirements for both delta and non-delta risks of options and warrants. While the methodology to calculate delta risk is set out in the CRR, the EBA was mandated to draft an RTS for the determination of non-delta risk.

The non-delta risk RTS lays down three approaches to calculate non-delta risks: the simplified approach, the delta plus approach and the scenario approach. The simplified approach was designed to apply only to institutions with a relatively simple trading business, specifically the one of institutions which only engage in purchasing options or warrants given that this approach is not suited to deal with sold options. The use of the simplified approach was also meant to be voluntary for those institutions. The wording that was adopted in Article 2 of the non-delta risk RTS provides for the following:

"Institutions that only purchase options and warrants may only use the simplified approach"

As it was adopted, the wording of Article 2 of the non-delta risks RTS does not deliver the intended scope of application of the simplified approach as explained above. Rather, all institutions that only buy options and warrants are now required to use the simplified approach and it could be interpreted that other institutions are also allowed to apply this approach.

In order to restore the intended scope of application of the simplified approach, Article 1 of the correcting delegated act amends Article 2 of the non-delta risks RTS in accordance with the following wording:

"Only institutions that exclusively purchase options and warrants may use the simplified approach".

3.2 Correction of the identified staff RTS (Article 2 of the Correcting Delegated Act)

Article 4 of the identified staff RTS sets out quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. These criteria include, in particular, the following criterion in point (c) of paragraph (1):

"the staff member was in the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of senior management or meets any of the criteria in points (1), (3), (5), (6), (8), (11), (12), (13) or (14) of Article 3".

The draft RTS as initially submitted by the EBA referred to "remuneration awarded in that financial year to a member of staff who is a member of senior management or meets any of the criteria..." but the wording was adopted in the manner shown above. This inadvertently changed the meaning of Article 4(1)(c). It was initially intended for this point in Article 4(1) to identify as "material risk takers" ("MRT") those individuals with remuneration equal to or greater than that of staff identified according to the aforementioned criteria of Art. 3. However, the wording as adopted meant that only individuals with remuneration equal to or greater than that of members of senior management were covered. Otherwise, Art 4(1)(c)

merely duplicated Article 3. To reinstate the intended meaning of Article 4(1)(c) of the identified staff RTS, Article 2 of the correcting delegated act inserts the "to a member of staff who" [emphasis added] as follows:

"the staff member was in the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of senior management or to a member of staff who meets any of the criteria in points (1), (5), (6), (8), (11), (12), (13) or (14) of Article 3."

In addition to this insertion, the reference to point (3) of Article 3 (referring to senior managers) has been removed, as it is merely a duplication of the reference to senior managers in the first part of the sentence.

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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 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 firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC¹, and in particular Article 94(2) thereof,

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 investment firms and amending Regulation (EU) No 648/2012², and in particular the third subparagraph of Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) thereof,

Whereas:

- (1) Article 329(3), the third subparagraph of Article 352(6) and the third subparagraph of Article 358(4) of Regulation (EU) No 575/2013 provide for the European Banking Authority (EBA) to develop a range of methods to reflect other risks, apart from delta risk, in the own funds requirements of institutions, in a manner proportionate to the scale and complexity of institutions' activities in options and warrants. Accordingly, the EBA developed draft regulatory technical standards in this regard which the Commission endorsed and adopted in Commission Delegated Regulation (EU) No 528/2014³.
- (2) The framework for prudential supervision established by Directive 2013/36/EU requires that all institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile.. In accordance with Article 94(2) of Directive 2013/36/EU, the EBA developed draft regulatory technical

¹ OJ L 176, 27.6.2013, p. 338.

² OJ L 176, 27.6.2013, p. 1.

³ Commission Delegated Regulation (EU) No 528/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach (OJ L 148, 20.5.2014, p. 29).

standards in this regard which the Commission endorsed and adopted in Commission Delegated Regulation (EU) No 604/2014⁴.

- (3) In Regulation (EU) No 528/2014 and Regulation (EU) No 604/2014 some errors occurred which need to be corrected.
- (4) Under Regulation (EU) No 528/2014 the simplified approach should only be available for institutions that exclusively purchase options and warrants, but they should not be obliged to use that approach. It is, therefore, appropriate to correct the wording of Article 2 of Regulation (EU) No 528/2014 which obliges those institutions to use the simplified approach and does not prevent other institutions from using that approach as well.
- (5) Article 4(1)(c) of Regulation (EU) No 604/2014 should be amended as appropriate to qualify any staff whose total remuneration takes them into the same remuneration bracket as senior management and risk takers as "material risk takers", that is, those whose professional activities have a material impact on the institution's risk profile.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (7) EBA conducted open public consultations on the original draft regulatory technical standards which this Regulation corrects, analysed the potential related costs and benefits and requested the opinion 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.
- (8) In order to ensure that the regulatory technical standards can be applied correctly as soon as possible, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1
Correction of Regulation (EU) No 528/2014

Article 2 of Regulation (EU) No 528/2014 is replaced by the following:

“ Article 2

Only institutions that exclusively purchase options and warrants may use the simplified approach.”

⁴ Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (OJ L 167, 6.6.2014, p. 30).

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).

Article 2
Correction of Regulation (EU) No 604/2014

In Article 4(1) of Regulation (EU) No 604/2014, point (c) is replaced by the following:

“(c) the staff member was in the preceding financial year awarded total remuneration that is equal to or greater than the lowest total remuneration awarded in that financial year to a member of senior management or to a member of staff who meets any of the criteria in points (1), (5), (6), (8), (11), (12), (13) or (14) of Article 3.”

Article 3

This Regulation shall enter into force on the 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, 18.2.2016

For the Commission
The President
Jean-Claude JUNCKER