



Brussels, 23.4.2025
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.4.2025

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions and indicators that the EBA is to use to determine whether extraordinary circumstances in the sense of Article 325az(5) and Article 325bf(6) of that Regulation have occurred

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 325az(10) of Regulation (EU) No 575/2013 ('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 specifying the conditions and indicators that EBA is to use to determine whether extraordinary circumstances have occurred.

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 325az(10) of Regulation (EU) No 575/2013 ('the Regulation'). A consultation paper was published on the EBA internet site on 3 August 2023, and the consultation closed on 3 November 2023. 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/legacy/regulation-and-policy/regulatory-activities/market-counterparty-and-cva-risk/regulatory>, pages 11-14 of the Final Report on the technical draft technical standards.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Articles 325bf(6) and 325az(5) of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2024/1623, competent authorities may permit institutions to derogate from certain requirements of the regulatory framework for the use of internal models, or apply a softer version of those requirements, where a situation of extraordinary circumstances has occurred. In accordance with Article 325az(9) CRR, the occurrence of extraordinary circumstances shall be determined by the EBA, which must issue an opinion to that effect.

The delegated act establishes a high-level framework for identifying a situation of extraordinary circumstances, by setting out conditions that need to be met and indicators that the EBA shall use to determine whether extraordinary circumstances have occurred.

The delegated act foresees that extraordinary circumstances could be recognised where there is a situation of significant cross-border financial market stress, or a major regime shift associated with a similar level of stress (e.g. a liquidity crisis), that are capable of rendering the outcome of the back-testing and profit and loss attribution requirements inappropriate.

As regards the indicators to be used to identify a situation of extraordinary circumstances, the delegated act envisages that at least volatility indicators, including indicators of realised volatilities, and correlation indicators should be considered. The assessment should also take into account how quickly the financial stress manifested or the regime shift happened. Other indicators and factors that are representative of or reflect the nature of the stress or regime shift can also be taken into consideration.

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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 648/2012¹, and in particular Article 325az(10), third subparagraph, thereof,

Whereas:

- (1) According to the Basel Committee on Banking Supervision standards for market risk, competent authorities may permit institutions in exceptional situations, not to comply with certain requirements of the alternative internal models approach in relation to the back-testing and the profit and loss attribution requirements. In line with the principle established by those standards, exceptional circumstances should only be deemed to be prevalent in a situation of significant cross-border financial market stress, or of a major regime shift, that materially affects institutions across the Union.
- (2) A further condition for extraordinary circumstances to be deemed to be prevalent should be that institutions are unable to meet the back-testing requirements set out in Article 325bf(3) of Regulation (EU) No 575/2013, or the profit and loss attribution requirement laid down in Article 325bg of that Regulation, because of events that are beyond their control and provided that the non-compliance with those requirements does not result from deficiencies in the internal model.
- (3) Both the back-testing and the profit and loss attribution test are to be based on data for the 250 business days preceding the reference date for which the respective test is performed. Extraordinary circumstances should thus be recognised where a period of significant cross-border financial market stress, or of a major regime shift, that materially affects institutions across the Union and produces exceptions that do not result from deficiencies in the internal model is fully or partially included in that 250 business days period.
- (4) The features of a crisis leading to significant cross-border financial market stress, or of a major regime shift, that materially affects institutions across the Union, are unique to every such crisis or regime shift. It would therefore not be appropriate to lay down in a prescriptive manner an exhaustive set of indicators that would be deemed to always

¹ OJ L 176, 27.06.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/575/oj>.

adequately capture the nature and intensity of the financial market stress or major regime shift at hand. However, based on past experience, a significant increase of the level of volatility, changes in correlation levels, and the fact that the significant cross-border financial market stress or the major regime shift manifest themselves very quickly and suddenly should be considered common traits of non-ordinary situations. Still, a sudden increase of the level of volatility, or changes in volatility levels, on their own, may not be sufficient to characterise a situation as one of significant cross-border financial market stress or of a major regime shift and, therefore, should not automatically lead to the recognition of extraordinary circumstances as referred to in Article 325az(5) and Article 325bf(6) of Regulation (EU) No 575/2013.

- (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 Council²,

HAS ADOPTED THIS REGULATION:

Article 1

Conditions and indicators that the EBA is to use to assess whether extraordinary circumstances have occurred

- 1. The EBA shall consider any period of 250 business days that institutions use to assess whether they comply with the back-testing requirements set out in Article 325bf of Regulation (EU) No 575/2013 or with the requirements of the profit and loss attribution test set out in Article 325bg of that Regulation to be a period of extraordinary circumstances, where that period contains a timespan in relation to which the EBA has determined that all of the following conditions are met:
 - (a) a significant cross-border financial market stress has been observed or a major regime shift has taken place;
 - (b) the significant cross-border financial market stress or major regime shift referred to in point (a) is likely to render the outcome of the back-testing performed in accordance with Article 325bf of Regulation (EU) No 575/2013 or of the profit and loss attribution test performed in accordance with Article 325bg of that Regulation non-representative of the adequacy of the internal model for the calculation of own funds requirements, including where those tests produce results that do not relate to deficiencies in the internal model.
- 2. When assessing whether the conditions specified in paragraph 1 are met, the EBA shall take into account indicators that are representative of, or reflect the nature of, the significant cross-border financial market stress or major regime shift, including all of the following:

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, ELI: <http://data.europa.eu/eli/reg/2010/1093/oj>).

- (a) the results of an analysis of volatility indices, and indicators of realised volatilities, that the EBA deems to be suitable to capture the nature of that significant cross-border financial market stress or that major regime shift;
- (b) the results of an assessment of whether that significant cross-border financial market stress or that major regime shift has led to volatility levels that are comparable to, or exceed, those observed during the global financial crisis or the COVID-19 pandemic, or has entailed a relative change in the volatility levels that is comparable to the change observed during that crisis or that pandemic;
- (c) the results of an assessment of how quickly the significant cross-border financial market stress manifested or the major regime shift happened;
- (d) the results of an analysis of relevant correlations and correlation indicators, including an assessment of whether a sudden and significant change of the level of the correlation was observed.

For the purposes of the first subparagraph, point (c) of this Article, with regard to the back-testing performed in accordance with Article 325bf of Regulation (EU) No 575/2013, the EBA shall in particular take into consideration whether and to which extent the statistical characteristics observed during the period of significant cross-border financial market stress or major regime shift differ from those observed during the reference period that institutions use for the calibration of the value-at-risk-number.

Article 2

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, 23.4.2025

For the Commission
The President
Ursula VON DER LEYEN