

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 648/2012 (Text with EEA relevance)

PART NINE

DELEGATED AND IMPLEMENTING ACTS

Article 456

Delegated acts

- 1 The Commission shall be empowered to adopt delegated acts in accordance with Article 462, concerning the following matters:
- a clarification of the definitions set out in Articles 4, 5, 142, 153, 192, 242, 272, 300, 381 and 411 to ensure uniform application of this Regulation;
 - b clarification of the definitions set out in Articles 4, 5, 142, 153, 192, 242, 272, 300, 381 and 411 in order to take account, in the application of this Regulation, of developments on financial markets;
 - c amendment of the list of exposure classes in Articles 112 and 147 in order to take account of developments on financial markets;
 - d the amount specified in point (c) of Article 123, Article 147(5)(a), Article 153(4) and Article 162(4), to take into account the effects of inflation;
 - e the list and classification of the off-balance sheet items in Annexes I and II, in order to take account of developments on financial markets;
 - f adjustment of the categories of investment firms in Article 95(1) and Article 96(1) to take account of developments on financial markets;
 - g clarification of the requirement laid down in Article 97 to ensure uniform application of this Regulation.
 - h amendment of the own funds requirements as set out in Articles 301 to 311 of this Regulation and Articles 50a to 50d of Regulation (EU) No 648/2012 to take account of developments or amendments of the international standards for exposures to a central counterparty;
 - i clarification of the terms referred to in the exemptions provided for in Article 400;
 - j amendment of the capital measure and the total exposure measure of the leverage ratio referred to in Article 429(2) in order to correct any shortcomings discovered on the basis of the reporting referred to in Article 430(1) before the leverage ratio has to be published by institutions as set out in Article 451(1)(a).
- 2 EBA shall monitor the own fund requirements for credit valuation adjustment risk and by 1 January 2015 submit a report to the Commission. In particular, the report shall assess:
- a the treatment of CVA risk as a stand-alone charge versus an integrated component of the market risk framework;
 - b the scope of the CVA risk charge including the exemption in Article 482;
 - c eligible hedges;
 - d calculation of capital requirements of CVA risk.

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On the basis of that report and where the findings are that such action is necessary the Commission shall also be empowered to adopt a delegated act in accordance with Article 462 to amend Article 381, Article 382(1) to (3) and Articles 383 to 386 concerning those items.

Article 457

Technical adjustments and corrections

The Commission shall be empowered to adopt delegated acts in accordance with Article 462, to make technical adjustment and corrections of non-essential elements in the following provisions in order to take account of developments in new financial products or activities, to make adjustments taking into account developments after the adoption of this Regulation in other legislative acts of the Union on financial services and accounting including accounting standards based on Regulation (EC) No 1606/2002:

- (a) the own funds requirements for credit risk laid down in Articles 111 to 134, and in Articles 143 to 191;
- (b) the effects of credit risk mitigation in accordance with Articles 193 to 241;
- (c) the own funds requirements for securitisation laid down in Articles 243 to 266;
- (d) the own funds requirements for counterparty credit risks in accordance with Articles 272 to 311;
- (e) the own funds requirements for operational risk laid down in Articles 315 to 324;
- (f) the own funds requirements for market risk laid down in Articles 325 to 377;
- (g) the own funds requirements for settlement risk laid down in Articles 378 and 379;
- (h) the own funds requirements for credit valuation adjustment risk laid down in Articles 383, 384 and 386;
- (i) Part Two and Article 99 only as a result of developments in accounting standards or requirements which take account of Union legislation.

Article 458

Macroprudential or systemic risk identified at the level of a Member State

1 Member States shall designate the authority in charge of the application of this Article. This authority shall be the competent authority or the designated authority.

2 Where the authority determined in accordance with paragraph 1 identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State and which that authority considers would better be addressed by means of stricter national measures, it shall notify the European Parliament, the Council, the Commission, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following:

- a the changes in the intensity of macroprudential or systemic risk;
- b the reasons why such changes could pose a threat to financial stability at national level;

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- c a justification of why Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures;
- d draft national measures for domestically authorised institutions, or a subset of those institutions, intended to mitigate the changes in the intensity of risk and concerning:
 - (i) the level of own funds laid down in Article 92;
 - (ii) the requirements for large exposures laid down in Article 392 and Article 395 to 403;
 - (iii) the public disclosure requirements laid down in Articles 431 to 455;
 - (iv) the level of the capital conservation buffer laid down in Article 129 of Directive 2013/36/EU;
 - (v) liquidity requirements laid down in Part Six;
 - (vi) risk weights for targeting asset bubbles in the residential and commercial property sector; or
 - (vii) intra financial sector exposures;
- e an explanation as to why the draft measures are deemed by the authority determined in accordance with paragraph 1 to be suitable, effective and proportionate to address the situation; and
- f an assessment of the likely positive or negative impact of the draft measures on the internal market based on information which is available to the Member State concerned.

3 When authorised to apply national measures in accordance with this Article, the authorities determined in accordance with paragraph 1 shall provide relevant competent authorities or designated authorities in other Member States with all relevant information.

4 The power to adopt an implementing act to reject the draft national measures referred to in point (d) of paragraph 2 is conferred on the Council, acting by qualified majority, on a proposal from the Commission.

Within one month of receiving the notification referred to in paragraph 2, the ESRB and EBA shall provide their opinions on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned.

Taking utmost account of the opinions referred to in the second subparagraph and if there is robust, strong and detailed evidence that the measure will have a negative impact on the internal market that outweighs the financial stability benefits resulting in a reduction of the macroprudential or systemic risk identified, the Commission may, within one month, propose to the Council an implementing act to reject the draft national measures.

In the absence of a Commission proposal within that period of one month, the Member State concerned may immediately adopt the draft national measures for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

The Council shall decide on the proposal by the Commission within one month after receipt of the proposal and state its reasons for rejecting or not rejecting the draft national measures.

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The Council shall only reject the draft national measures if it considers that one or more of the following conditions are not complied with:

- a the changes in the intensity of macroprudential or systemic risk are of such nature as to pose risk to financial stability at national level;
- b Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures;
- c the draft national measures are more suitable to address the identified macroprudential or systemic risk and do not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole, thus forming or creating an obstacle to the functioning of the internal market;
- d the issue concerns only one Member State; and
- e the risks have not already been addressed by other measures in this Regulation or in Directive 2013/36/EU.

The assessment of the Council shall take into account the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 2 by the authority determined in accordance with paragraph 1.

In the absence of a Council implementing act to reject the draft national measures within one month after receipt of the proposal by the Commission, the Member State may adopt the measures and apply them for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

5 Other Member States may recognise the measures set in accordance with this Article and apply them to domestically authorised branches located in the Member State authorised to apply the measures.

6 Where Member States recognise the measures set in accordance with this Article, they shall notify the Council, the Commission, EBA, the ESRB and the Member State authorised to apply the measures.

7 When deciding whether to recognise the measures set in accordance with this Article, the Member State shall take into consideration the criteria set in paragraph 4.

8 The Member State authorised to apply the measures may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which do not recognise the measures.

9 Before the expiry of the authorisation issued in accordance with paragraph 4, the Member State shall, in consultation with the ESRB and EBA, review the situation and may adopt, in accordance with the procedure referred to in paragraph 4, a new decision for the extension of the period of application of national measures for one additional year each time. After the first extension, the Commission shall in consultation with the ESRB and EBA review the situation at least annually.

10 Notwithstanding the procedure as set out in paragraphs 3 to 9, Member States shall be allowed to increase the risk weights beyond those provided in this Regulation by up to 25 %, for those exposures identified in points (vi) and (vii) of paragraph 2(d) of this Article and tighten the large exposure limit provided in Article 395 by up to 15 % for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner, provided that the conditions and notification requirements in paragraph 2 of this Article are met.

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Article 459

Prudential requirements

The Commission shall be empowered to adopt delegated acts in accordance with Article 462, to impose, for a period of one year, stricter prudential requirements for exposures where this is necessary to address changes in the intensity of microprudential and macroprudential risks which arise from market developments in the Union or outside the Union affecting all Member States, and where the instruments of this Regulation and Directive 2013/36/EU are not sufficient to address these risks, in particular upon the recommendation or opinion of the ESRB or EBA, concerning:

- (a) the level of own funds laid down in Article 92;
- (b) the requirements for large exposures laid down in Article 392 and Articles 395 to 403;
- (c) the public disclosure requirements laid down in Articles 431 to 455.

The Commission, assisted by the ESRB shall, at least on an annual basis, submit to the European Parliament and the Council, a report on market developments potentially requiring the use of this Article.

Article 460

Liquidity

1 The Commission shall be empowered to adopt a delegated act in accordance with Article 462 to specify in detail the general requirement set out in Article 412(1). The delegated act adopted in accordance with this paragraph shall be based on the items to be reported in accordance with Part Six, Title II and Annex III, shall specify under which circumstances competent authorities have to impose specific in- and outflow levels on credit institutions in order to capture specific risks to which they are exposed and shall respect the thresholds set out in paragraph 2.

2 The liquidity coverage requirement referred to in Article 412 shall be introduced in accordance with the following phasing-in:

- a 60 % of the liquidity coverage requirement in 2015;
- b 70 % as from 1 January 2016;
- c 80 % as from 1 January 2017;
- d 100 % as from 1 January 2018.

For this purpose the Commission shall take into account the reports referred to in Article 509(1), (2) and (3) and international standards developed by international fora as well as Union specificities.

The Commission shall adopt the delegated act referred to in paragraph 1 by 30 June 2014. It shall enter into force by 31 December 2014, but shall not apply before 1 January 2015.

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Article 461

Review of the phasing-in of the liquidity coverage requirement

1 EBA shall, after consulting the ESRB, by 30 June 2016 report to the Commission on whether the phase-in of the liquidity coverage requirement as specified in Article 460(2) should be amended. Such analysis shall take due account of market and international regulatory developments as well as Union specificities.

EBA shall in its report assess in particular a deferred introduction of the 100 % minimum binding standard, until 1 January 2019. The report shall take into account the annual reports referred to in Article 509(1), relevant market data and the recommendations of all competent authorities.

2 Where necessary to address market and other developments, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to alter the phase-in specified in Article 460 and defer until 2019 the introduction of a 100 % binding minimum standard for the liquidity coverage requirement set out in Article 412(1) and to apply in 2018 a 90 % binding minimum standard for the liquidity coverage requirement.

For the purposes of assessing the necessity of deferral the Commission shall take into account the report and assessment referred to in paragraph 1.

A delegated act adopted in accordance with this Article shall not apply before 1 January 2018 and shall enter into force by 30 June 2017.

Article 462

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Articles 456 to 460 shall be conferred for an indeterminate period of time from 31 December 2014.

3 The delegation of power referred to in Articles 456 to 460 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Articles 456 to 460 shall enter into force only if no objection has been expressed by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 463

Objections to regulatory technical standards

Where the Commission adopts a regulatory technical standard pursuant to this Regulation which is the same as the draft regulatory technical standard submitted by EBA, the period during which the European Parliament and the Council may object to that regulatory technical standard shall be one month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month. By way of derogation from the second subparagraph of Article 13(1) of Regulation (EU) No 1093/2010, the period during which the European Parliament or the Council may object to that regulatory technical standard may, where appropriate, be further extended by one month.

Article 464

European Banking Committee

1 The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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(1) OJ L 3, 7.1.2004, p. 36.

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