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Commission Implementing Regulation (EU) No 602/2014 of 4 June 2014 laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 602/2014

of 4 June 2014

laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

(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 investment firms and amending Regulation (EU) No 648/2013<sup>(1)</sup>, and in particular Article 410(3) thereof,

Whereas:

- (1) It is appropriate to provide for implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of a uniform approach to assess institutions' material non-compliance with the requirements by reason of negligence or omission, and to the application of the additional risk weights. In order to facilitate the convergence of supervisory practices when applying additional risk weights, an appropriate formula should be defined. That formula should impose a proportionate additional risk weight of no less than 250 % which progressively increases with subsequent infringements of Articles 405, 406 or 409 of Regulation (EU) No 575/2013. An appropriate factor should be introduced in the formula to allow for a lower additional risk weight to apply in the cases of exposures exempted pursuant to Article 405(3) of Regulation (EU) No 575/2013.
- (2) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (3) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, 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 Council<sup>(2)</sup>,

HAS ADOPTED THIS REGULATION:

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#### Modifications etc. (not altering text)

- C1** The “appropriate regulator” has power to make such provision as they consider appropriate by means of an instrument in writing to prevent, remedy or mitigate any failure of the provisions of this Regulation to operate effectively or any other deficiency arising from the withdrawal of the United Kingdom from the EU, see The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), [regs. 2, 3, Sch. Pt. 4](#) (with saving on IP completion day by S.I. 2019/680, [regs. 1\(2\), 11](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- C2** Regulation: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023 \(c. 29\), ss. 3, 86\(3\), Sch. 1 Pts. 1, 3; S.I. 2023/779, reg. 2\(d\)](#)

### Article 1

#### General considerations

1 Competent authorities shall ensure that any additional risk weight imposed pursuant to Article 407 of Regulation (EU) No 575/2013 is applied to all relevant securitisation positions, held by an institution, which are affected by the material infringement of Article 405, 406 or 409 of Regulation (EU) No 575/2013.

2 Where an institution rectifies its infringement of the requirements provided in Article 405, 406 or 409 of Regulation (EU) No 575/2013, the additional risk weight shall cease to apply as soon as the rectification is notified to the competent authority.

3 When assessing whether to impose an additional risk weight, competent authorities shall consider both the materiality of the infringement of Article 405, 406 or 409 of Regulation (EU) No 575/2013 and its relevance to the risk analysis of the securitisation position. Materiality shall be taken into consideration in both quantitative and qualitative terms and, where applicable, at both entity and consolidated level. In assessing materiality, competent authorities shall consider, among other factors, the duration of the infringement, the size of the affected positions and whether the institution has attempted to proactively rectify the infringement.

4 When assessing whether an institution has failed to meet the requirements set out in Article 405 of Regulation (EU) No 575/2013 in any material respect by reason of negligence or omission, competent authorities shall not be influenced by any omission by the originator, sponsor or original lender to disclose its commitment to retain a material economic interest of not less than 5 % with regard to past securitisations, where the institution can demonstrate that it has taken appropriate account of such circumstance.

5 In the case of a material infringement of the disclosure requirement provided in Article 409 of Regulation (EU) No 575/2013 by reason of negligence or omission of the institution, competent authorities shall impose an additional risk weight to the originator's, sponsor's or original lender's retained positions in, or other exposure to the relevant securitisation.

6 When assessing whether institutions have failed to meet the requirements set out in Articles 405, 406 or 409 of Regulation (EU) No 575/2013, in any material respect for reasons of negligence or of omission, for securitisation positions issued on or after 1 January 2011 and before 1 January 2014, competent authorities may take into account whether those institutions complied continuously between the date of issuance and 31 December 2013 with the requirements specified in Article 122a of Directive 2006/48/EC of the European Parliament and of the Council<sup>(3)</sup> and in the Guidelines to Article 122a of Directive 2006/48/EC of the Committee of European Banking Supervisors<sup>(4)</sup>.

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## Article 2

### Calculation of additional risk weight

Where an institution does not meet the relevant requirements provided in Articles 405, 406 or 409 of Regulation (EU) No 575/2013 in any material respect, competent authorities shall apply the following formula to determine the total risk weight (Total RW) in accordance with the approach specified in Article 245(6) and Article 337(3) of Regulation (EU) No 575/2013:

$$\text{Total RW} = \text{Min}[12,5; \text{Original RW} \times (1 + (2,5 + 2,5 \times \text{InfringementDuration}_{\text{years}})) \times (1 - \text{Article405Exemption}_{\text{Pct}})]$$

Where:

12,5 is a factor representing the maximum value that the total risk weight can reach;  
'Original RW' is the risk weight that would apply to the securitisation positions if no additional risk weight was imposed;

2,5 is the minimum factor applying to the original risk weight in order to calculate the additional risk weight;

'InfringementDuration<sub>years</sub>' is the duration of the infringement, expressed in years, rounded down to the nearest 12-month period. This variable is equal to '0' for an infringement of less than 12 months, equal to '1' for an infringement of more than 12 months but less than 24 months, equal to '2' for an infringement of more than 24 months but less than 36 months, etc. The duration shall generally be measured from the start of the infringement for the securitisation, although competent authorities, taking account of the specificities of the securitisation, may impose other starting points. 'Infringement' shall mean the breach of one or more of the requirements set out in Article 405, 406 or 409 capable of triggering an additional risk weight. The infringement shall turn into a 'subsequent infringement' when time passes without rectifying the infringement, leading to a progressive increase of the additional risk weight.

'Article405Exemption<sub>Pct</sub>' is a variable equal to 0,5 if Article 405(3) of Regulation (EU) No 575/2013 applies to the securitisation positions to which the additional risk weight is calculated, and equal to 0 if such exemption does not apply.

## 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.

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Done at Brussels, 4 June 2014.

*For the Commission*

*The President*

José Manuel BARROSO

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- (1) [OJ L 176, 27.6.2013, p. 1](#)
- (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](#)).
- (3) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ([OJ L 177, 30.6.2006, p. 1](#)).
- (4) <http://www.eba.europa.eu/documents/10180/106202/Guidelines.pdf>

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**Changes and effects yet to be applied to :**

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 13](#)