

Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines (Text with EEA relevance)

CHAPTER III

CRITERIA RELATING TO THE DETERMINATION OF CRITICAL FUNCTIONS AND CORE BUSINESS LINES

Article 6

Criteria relating to the determination of critical functions

- 1 A function shall be considered critical, where it fulfils both of the following:
 - a the function is provided by an institution to third parties not affiliated to the institution or group; and
 - b the sudden disruption of that function would likely have a material negative impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance of the function for the third parties and the systemic relevance of the institution or group in providing the function.
- 2 When assessing the material negative impact on third parties, the systemic relevance of the function for third parties and the systemic relevance of the institution or group providing the function, the institution and the resolution authority shall take into account the size, market share, external and internal interconnectedness, complexity, and cross-border activities of the institution or group.

The assessment criteria for the impact on third parties shall include at least the following elements:

- a the nature and reach of the activity, the global, national or regional reach, volume and number of transactions; the number of customers and counterparties; the number of customers for which the institution is the only or principal banking partner;
- b the relevance of the institution, on a local, regional [^{F1}or national] level, as appropriate for the market concerned. The relevance of the institution may be assessed on the basis of the market share, the interconnectedness, the complexity and cross border activities;
- c the nature of the customers and stakeholders affected by the function, such as but not limited to retail customers, corporate customers, interbank customers, central clearing houses and public entities;
- d the potential disruption of the function on markets, infrastructures, customers and public services. In particular, the assessment may include the effect on the liquidity of markets concerned, the impact and extent of disruption to customer business, and short-term liquidity needs; the perceptibility to counterparties, customers and the public; the capacity and speed of customer reaction; the relevance to the functioning of other markets; the effect on the liquidity, operations, structure of another market; the effect on

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other counterparties related to the main customers and the interrelation of the function with other services.

3 A function that is essential to the real economy and financial markets shall be considered substitutable where it can be replaced in an acceptable manner and within a reasonable time frame thereby avoiding systemic problems for the real economy and the financial markets.

When assessing the substitutability of a function the following criteria shall be taken into account:

- a the structure of the market for that function and the availability of substitute providers;
- b the ability of other providers in terms of capacity, the requirements for performing the function, and potential barriers to entry or expansion;
- c the incentive of other providers to take on these activities;
- d the time required by users of the service to move to the new service provider and costs of that move, the time required for other competitors to take over the functions and whether that time is sufficient to prevent significant disruption depending on the type of service.

4 A service is considered critical where its disruption can present a serious impediment to, or prevent the performance of, one or more critical functions. A service is not considered critical where it can be provided by another provider within a reasonable time frame to a comparable extent as regards its object, quality and cost.

5 The disruption of functions or services shall consist in functions and services that are no longer provided to a comparable extent, under comparable conditions and of comparable quality, unless the change in providing the function or service concerned takes place in an orderly manner.

Textual Amendments

- F1** Words in [Art. 6\(2\)\(b\)](#) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 5 para. 1\(5\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Article 7

Criteria relating to the determination of core business lines

1 Business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part shall be considered core business lines.

2 Core business lines shall be identified on the basis of an institution's internal organisation, its corporate strategy and how much those core business lines contribute to the financial results of the institution. Indicators of core business lines include, but are not limited to, the following:

- a revenues generated by the core business line as percentage of overall revenues;
- b profit generated by the core business line as percentage of overall profit;
- c return on capital or assets;
- d total assets, revenue and earnings;

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- e the customer base, geographic footprint, brand and operational synergies of the business with other group businesses;
- f impact of ceasing the core business line on costs and earnings, where it is a source of funding or liquidity;
- g the growth outlook of the core business line;
- h the attractiveness of the business to competitors as a potential acquisition;
- i market potential and franchise value.

Future expected revenues, growth outlooks and franchise value may be considered in the identification of a core business line where they are supported by plausible, evidenced projections setting out the assumptions on which they are based.

3 Core business lines may rely on activities which do not by themselves generate direct profit for the institution, but which support core business lines of the institution thereby contributing indirectly to the institution's profits.

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Changes and effects yet to be applied to :

- [Regulation revoked by 2023 c. 29 Sch. 1 Pt. 3](#)