

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)

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)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council⁽¹⁾, and in particular Article 2(2), and Article 104(4) thereof,

Whereas:

- (1) The deferral of extraordinary *ex post* contributions, referred to in Article 104 of Directive 2014/59/EU, should be granted by the resolution authority upon an institution's request in order to facilitate the assessment by the resolution authority that that institution meets the conditions for the deferral set out in Article 104(3) of Directive 2014/59/EU. The concerned institution should provide any information deemed necessary by the resolution authority to conduct such assessment. The resolution authority should take into account all information available to the national competent authorities to avoid any duplication of notification requirements.
- (2) When assessing the impact of the payment of extraordinary *ex post* contributions on the solvency or liquidity of the institution, the resolution authority should analyse the impact of the payment on the institution's capital and liquidity position. The analysis should assume a loss on the institution's balance sheet equal to the amount payable at the point in time when it is due and make a projection of the institution's capital

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

ratios following this loss for an appropriate time frame. Moreover, it should assume an outflow of funds equal to the amount payable at the point in time when it is due and should assess the liquidity risk.

- (3) Recovery and resolution plans require institutions and resolution authorities to be able to identify and ensure the continuance of critical functions of institutions or groups.
- (4) The continuity of critical functions of the institution under resolution is one of the main resolution objectives. It aims at safeguarding financial stability and the real economy and therefore plays a key role in the recovery and resolution planning process. Critical functions can include deposit taking, lending and loan services, payment, clearing, custody and settlement services, wholesale funding markets activities, and capital markets and investments activities.
- (5) Critical functions of an institution or group are set out in its recovery plan. The recovery plan should be assessed by the resolution authority and form the basis of the resolution plan. The resolution authority should conduct its own assessment of critical functions when establishing the resolution plan and should demonstrate how critical functions and core business lines could be legally and economically separated from other functions so as to ensure continuity upon the failure of the institution.
- (6) When assessing the resolvability of an institution, resolution authorities should take into account whether the chosen strategy ensures the continuity of critical functions, and whether the power to address or remove impediments to resolvability relates to critical functions. Similarly, in a bail-in scenario, liabilities could be exempted from the scope of the bail-in where the exclusion is strictly necessary and proportionate to achieve the continuity of critical functions. Critical functions also become relevant in the operation of a bridge bank tool since a bridge bank institution should maintain critical functions.
- (7) Critical functions should be identified in a two-step procedure: first, the institutions perform a self-assessment when establishing their recovery plans. Secondly, the resolution authorities critically review the recovery plans of the individual institutions to ensure consistency and coherence in the approaches used by banks. Since the resolution authorities benefit from the overarching view as to which functions are essential to maintain financial stability as a whole, they should take the final decision as regards the designation of critical functions for the purpose of resolution planning and execution.
- (8) Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (9) Institutions and resolution authorities should also identify the critical services in the recovery and resolution plans. To the extent that critical services are outsourced to third parties, the resolution authority should be able to limit its assessment to that which is necessary to verify whether the institution has an appropriate business continuity plan in place.
- (10) The determination of a service as critical should enable institutions to ensure the continued availability of those services by providing them through entities or units that are resilient in a failure, or establishing appropriate arrangements where they are supplied by an external provider.
- (11) The main difference between a critical function and a core business line lies in the impact of the activities concerned. While critical functions should be assessed from a perspective of their importance for the functioning of the real economy and financial markets and therefore for financial stability as a whole, core business lines should be assessed on the basis of the importance for the institution itself such as the level of their contributions to revenues and profits of the institution.
- (12) Insofar as the recovery plan should contain a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution, also the resolution plan should contain a mapping of the institution's critical operations and core business lines and a demonstration of how critical functions and core business lines could be legally and economically separated from other functions so as to ensure continuity upon the failure of the institution. In resolution, the continuity of critical functions and core business lines may justify an exemption of certain liabilities from the application of the bail-in tool and may also justify its transference to a bridge bank.
- (13) While core business lines are often linked to how much they contribute to the financial results of the institution, such an approach may not completely capture all core business lines because an institution may provide a service which is not directly profitable (or may even generate losses) but creates significant franchise value and is therefore important to its business as a whole,

HAS ADOPTED THIS REGULATION:

Modifications etc. (not altering text)

- C1** Regulation: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023](#) (c. 29), ss. 3, 86(3), [Sch. 1 Pt. 3](#); S.I. 2023/779, [reg. 2\(d\)](#)

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

CHAPTER I

COMMON PROVISIONS

Article 1

Subject matter

This Regulation lays down rules specifying:

- (a) ^{F1} ...
- (b) the criteria for the determination of the activities, services and operations referred to in [^{F2}the definition of “critical functions” in section 3(1) of the Banking Act 2009 (including as applied by that Act in relation to persons other than a bank)];
- (c) the criteria for the determination of the business lines and associated services referred to in [^{F3}the definition of “core business lines” in section 48B(14) of the Banking Act 2009 (including as applied in relation to other persons by that Act)].

^{F4}

Textual Amendments

- F1** Art. 1(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 5 para. 1(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 1(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(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 1(c) 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(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 1 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 5 para. 1(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘deferral period’ means a period of up to six months;
- (2) ‘function’ means a structured set of activities, services or operations that are delivered by the institution or group to third parties irrespective from the internal organisation of the institution;
- (3) ‘business line’ means as a structured set of activities, processes or operations that are developed by the institution or group for third parties to achieve the organisation's goals.
- (4) [^{F5}‘resolution authority’ means the Bank of England;

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(5) ‘institution’ has the meaning given in section 3A(8) of the Banking Act 2009;

(6) ‘group’ has the meaning given in section 3(2)(b) of the Banking Act 2009.]

Textual Amendments

F5 Art. 2(4)-(6) inserted (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(3)**; 2020 c. 1, Sch. 5 para. 1(1)

^{F6}CHAPTER II

DEFERRAL OF *EX POST* CONTRIBUTIONS

Article 3

Deferral of extraordinary *ex post* contributions

.....

Article 4

Assessment of the impact of the deferral on solvency

.....

Article 5

Assessment of the impact of deferral on liquidity

.....

Textual Amendments

F6 Ch. 2 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 5 para. 1(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 [^{F7}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 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;

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- 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

- F7** 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;
- 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.

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.

CHAPTER IV

FINAL PROVISIONS

Article 8

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*.

F8 ...

Done at Brussels, 2 February 2016.

For the Commission

The President

Jean-Claude JUNCKER

Textual Amendments

F8 Words in *Signature* omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 5 para. 1(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

(1) [OJ L 173, 12.6.2014, p. 190.](#)

Changes to legislation:

Commission Delegated Regulation (EU) 2016/778 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

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