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Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/98

of 16 October 2015

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>(1)</sup>, and in particular to Article 51(4) and Article 116(4) thereof,

Whereas:

- (1) The performance of the mapping of a group of institutions, which would identify the group entities in the Union or a third country and which would describe for each group entity its nature, location, the authorities involved in its supervision, the applicable prudential exemptions, its importance for the group and importance for the country in which it is authorised or established as well the criteria for determining that importance, is considered as a vital element for the identification of college members and potential observers. In this context, information on the importance of a branch for the group and importance of that branch for the Member State in which it is established is essential in order to determine the participation of the competent authorities of that Member State in college activities. Information on the nature of the group entities, whether institutions, branches or other financial sector entities, as well as on their country of authorisation or establishment, whether a Member State or a third country, is also important for identifying college members and potential observers.
- (2) Information on the importance of a group entity for the group and its importance for the Member State in which it is authorised or established is essential for determining the level of engagement of the competent authority of that Member State in the activities of the college, and, in particular, for carrying out the supervisory review and evaluation process.
- (3) The written coordination and cooperation arrangements referred to in Article 115 of Directive 2013/36/EU should cover all areas of college work to strengthen the efficiency

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- of supervisory colleges. The written arrangements should also cover arrangements between some college members involved in specific college activities such as those performed through specific substructures of the college. The written arrangements should also include operational aspects of college work as these aspects are essential for facilitating the functioning of the college both in going concern and during emergency situations. As it is essential to ensure cooperation within the college before and for the purpose of providing input for group resolution issues, the written arrangements should provide for the processes of coordinating the relevant input as well as the responsibilities and role of the consolidating supervisor in communicating that input through the group-level resolution authority as defined in Article 2(1)(44) of Directive 2014/59/EU of the European Parliament and of the Council<sup>(2)</sup> to the resolution college. The written arrangements should be comprehensive, coherent and exhaustive and should provide an adequate and appropriate basis to the competent authorities in order for them to discharge their relevant duties and tasks within, rather than outside the college.
- (4) Colleges are a key tool for exchanging information, anticipating and dealing with emergency situations, and enabling the consolidating supervisor to conduct effective supervision on a consolidated basis. To ensure consistency and enable the EBA to perform its tasks as provided for in Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(3)</sup> and in Article 116 of Directive 2013/36/EU, it is appropriate for the EBA to participate in all colleges as a member.
  - (5) In order to perform all college activities, the consolidating supervisor and the other members of the college should have an overview of the activities carried out by all group entities, including by those carrying out financial activities without being qualified as institutions and by those operating outside the Union. Interaction between the consolidating supervisor, college members, third-country supervisory authorities, public authorities or bodies which are responsible for or involved in the supervision of a group entity, including authorities responsible for the prudential supervision of the group's financial sector entities or competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection, should be promoted by allowing these third-country supervisory authorities and public authorities or bodies to participate in college work as observers, as appropriate.
  - (6) College members should discuss and agree on the scope and level of involvement of observers, if any, in the college. The framework of participation of observers in the college should be clearly stated in the written coordination and cooperation arrangements and should be communicated to the observers.
  - (7) Members of the college of supervisors should work together, coordinating their supervisory actions to the maximum extent possible and cooperating closely in order to better perform their duties, to avoid duplication of tasks, including duplication of information requests addressed to the supervised entities of the group. In this context, agreements on entrustment of tasks and delegation of responsibilities should be considered on a regular basis by the members of the college, and at least when college members develop their college supervisory examination programme.

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- (8) The consolidating supervisor should have access to all information necessary for the performance of its tasks and responsibilities and should act as the coordinator for the collection and dissemination of information received from any college member or observer or from any entity of the group, or any input received from the resolution college, in particular from the relevant group-level resolution authority. The same applies also for the members of the college. In particular, where the consolidating supervisor determines the relevance of particular information for another member of the college, including the competent authority in a host Member State where a significant branch is established, it should refrain from unjustifiably excluding members of the college from receiving information.
- (9) Members of the college participating in the performance of the tasks referred to in Article 113 of Directive 2013/36/EU should be encouraged to exchange information on the assessment of the main elements of the supervisory review and evaluation process as referred to in Article 97 of that Directive, recognising at the same time that the supervisory review and evaluation process may be performed differently across Member States depending on the transposition of those Union rules into the national legislation taking also into account the guidelines issued by the EBA under Article 107(3) of Directive 2013/36/EU.
- (10) To facilitate cooperation between competent authorities and to coordinate any decisions intended to address issues of compliance by an institution with the requirements regarding approaches that need permission by competent authorities before being used for the calculation of own fund requirements (use of internal models for credit risk, market risk, counterparty risk and operational risk), the conditions of cooperation between the consolidating supervisor and the relevant competent authorities for exchanging information on the performance of those internal approaches, and for discussing and reaching agreement on measures to address inefficiencies identified should be specified.
- (11) To facilitate the identification of early warning signs, potential risks and vulnerabilities for the group and its entities and for the system in which they operate, college members are expected to exchange quantitative information, for the group and its entities, in a consistent and comparable way. This information should cover main areas of the information collected by the competent authorities in accordance with Commission Implementing Regulation (EU) No 680/2014<sup>(4)</sup> specifying the uniform formats, frequencies, dates of reporting, definitions and the IT solutions to be applied by the institutions for supervisory reporting purposes, and should be exchanged while the competent authorities are in the process of developing the group risk assessment report and reaching the joint decisions on capital and liquidity pursuant to Article 113 of Directive 2013/36/EU. Each college should decide on the exact set of information to be exchanged for these purposes.
- (12) To develop the college supervisory examination programme, college members shall take into account the group risk assessment report and the outcome of the capital and liquidity joint decision so as to better identify the priorities of common work. Thus, the development of the college supervisory examination programme should start once

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- the group risk assessment and joint decision process have been concluded, while for its finalisation the competent authorities should consider the tasks they have committed to perform at national level, the resources allocated to those tasks and the respective timelines for their performance.
- (13) Members of the college should coordinate their activities in preparation for and during emergency situations such as adverse developments which may seriously jeopardise the orderly function and the integrity of the financial markets or the stability of the whole or part of the financial system of the Union, or other situations that affect or might explicitly affect the financial and economic situation of a banking group or any of its subsidiaries. Therefore, the planning and coordination of the competent authorities' activities in preparation for and during emergency situations should include, but not be limited to the activities referred to in the relevant provisions of Directive 2014/59/EU; in particular activities aiming at coordinating the group recovery planning and at providing coordinated input to resolution authorities, where needed, should be seen as examples of activities in preparation for and during emergency situations.
  - (14) When dealing with an emergency situation, college members, under the coordination of the consolidating supervisor, should aim to develop a coordinated supervisory assessment of the situation, agree on a coordinated supervisory response and monitor the implementation of their response to ensure that the emergency situation is properly assessed and addressed. They should also ensure that any external communication is done in a coordinated way and covers elements which are agreed *ex-ante* between the members of the college.
  - (15) The provisions in this Regulation are closely linked to one another, since they deal with the general conditions of the functioning of the colleges of supervisors. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required by Article 51(4) and 116(4) of Directive 2013/36/EU in a single Regulation.
  - (16) As the vast majority of supervisory colleges across the EU are formed in accordance with Article 116 of Directive 2013/36/EU it appears more appropriate to first specify the conditions regarding colleges under Article 116 of Directive 2013/36/EU before specifying those regarding colleges under Article 51 of Directive 2013/36/EU, the former appearing more as a general case, the latter as a special case.
  - (17) This Regulation is based on the draft regulatory technical standards submitted by the European supervisory authority (European Banking Authority) (EBA) to the Commission.
  - (18) The EBA 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 opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

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. para. 136** (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 Pt. 3**; [S.I. 2023/779](#), **reg. 2(d)**

CHAPTER 1

**GENERAL PROVISIONS**

*Article 1*

**Subject matter**

This Regulation specifies the general conditions of functioning of the college of supervisors (‘college’) formed in accordance with Article 116 and Article 51(3) of Directive 2013/36/EU.

CHAPTER 2

**CONDITIONS REGARDING THE FUNCTIONING OF COLLEGES FORMED  
IN ACCORDANCE WITH ARTICLE 116 OF DIRECTIVE 2013/36/EU**

*SECTION 1*

*Establishment and functioning of colleges*

*Article 2*

**Establishment of the mapping of a group of institutions**

1 For the purpose of identifying the members and potential observers of the supervisory college, the consolidating supervisor shall establish the mapping of a group of institutions in accordance with Article 2 of Commission Implementing Regulation (EU) 2016/99<sup>(5)</sup>.

2 The mapping of a group of institutions shall result in the identification of the following group entities:

- a institutions authorised and branches established in a Member State;
- b financial sector entities authorised in a Member State;
- c institutions authorised and branches established in a third country.

3 The following information shall be reflected in the mapping for each institution authorised and branch established in a Member State:

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- b the competent authority responsible for the supervision of the institution or the competent authority of the host Member State where the branch is established as well as other financial sector authorities of that Member State, such as competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection;
- c for an institution, including for a subsidiary of an EU parent undertaking established in the same Member State as well as for the EU parent undertaking itself, information as to whether the institution is subject to prudential supervision on an individual basis or whether it has been granted a waiver from the application of requirements set out in Parts Two to Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>(6)</sup> on an individual basis pursuant to Articles 7, 8, or 10 of that Regulation;
- d for an institution, information relating to the importance of the institution for the Member State where it is authorised and the relevant criteria used by the competent authorities to determine this importance as well as information on the importance of that institution for the group, provided that the total amount of assets and off-balance sheet items of that institution exceeds 1 % of the group's total assets and off balance sheet items on consolidated basis;
- e for a branch, information relating to the importance of the branch for the Member State where it is established, in particular whether this branch has been designated or is proposed to be designated as significant in accordance with Article 51 of Directive 2013/36/EU, as well as information on the importance of that branch for the group, provided that the total amount of assets and off-balance sheet items of that branch exceeds 1 % of the group's total assets and off balance sheet items on consolidated basis.
- 4 The following information shall be reflected in the mapping for each financial sector entity, institution or branch referred to in points (b) and (c) of paragraph 2:
- a the Member State where the financial sector entity is authorised or the third country where the institution is authorised or the branch is established;
- b the authority responsible for or involved in the supervision of that financial sector entity, institution or branch;
- c information on the importance of the financial sector entity, of the institution or of the branch for the group, provided that the total amount of assets and off-balance sheet items of that financial sector entity, institution or branch exceeds 1 % of the group's total assets and off balance sheet items on consolidated basis.

### Article 3

#### Designation of the members and observers of a college

- 1 The consolidating supervisor shall invite the following authorities to become members of the college:
- a the competent authorities responsible for the supervision of institutions which are subsidiaries of an EU parent institution or of an EU parent financial holding company or of an EU parent mixed financial holding company and the competent authorities of host Member States where significant branches as referred to in Article 51 of Directive 2013/36/EU are established;
- b the ESCB central banks of Member States that are involved in accordance with their national law in the prudential supervision of the legal entities referred to in point a, but which are not competent authorities;

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2 The consolidating supervisor may invite the competent authorities of host Member States where non-significant branches are established to participate in the college as observers in accordance with the process determined in Article 3(1)(b) of Implementing Regulation (EU) 2016/99.

3 The consolidating supervisor may invite the supervisory authorities of third countries where institutions are authorised or branches are established to participate in the college as observers in accordance with the process determined in Article 3(1)(c) of Implementing Regulation (EU) 2016/99.

4 The consolidating supervisor may invite the following authorities to participate in the college as observers in accordance with the process determined in Article 3(1)(d) of Implementing Regulation (EU) 2016/99:

- a the ESCB central banks which are not empowered by national law to supervise an institution authorised or a branch established in a Member State;
- b the public authorities or bodies in a Member State, which are responsible for or involved in the supervision of a group entity, including authorities responsible for the prudential supervision of the group's financial sector entities or competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection.

5 The consolidating supervisor and the members of the college shall specify the arrangements covering the participation of the observers in the college in the written coordination and cooperation arrangements referred to in Article 5(c). The consolidating supervisor shall notify these arrangements to the observers.

#### *Article 4*

### **Communication of the setting up and composition of a college**

The consolidating supervisor shall communicate to the EU parent undertaking of the group the establishment of a college and the identity of its members and observers, as well as any changes in that composition.

#### *Article 5*

### **Establishment of the written coordination and cooperation arrangements**

The written coordination and cooperation arrangements referred to in Article 115 of Directive 2013/36/EU shall include at least the following:

- (a) information on the overall structure of the group covering all group entities;
- (b) identification of the members and observers of the college;
- (c) a description of the terms covering the participation of observers in the college as referred to in Article 3(5) of this Regulation, including their involvement in the various dialogues and processes of the college and their rights and obligations with regard to exchanging information;

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(d) a description of the arrangements for exchanging information, including their scope, frequency and channels of communication;

- (e) a description of the arrangements for the treatment of confidential information;
- (f) a description of the arrangements on entrustment of tasks and on delegation of responsibilities, where relevant;
- (g) a description of any substructures of the college;
- (h) a description of the framework for the planning and coordination of supervisory activities in going concern situations;
- (i) a description of the framework for the planning and coordination of supervisory activities in preparation for and during emergency situations, including contingency planning, communication tools and procedures;
- (j) a description of the communication policy of the consolidating supervisor and the members of the college with the EU parent undertaking and with the group entities;
- (k) agreed procedures and deadlines to be followed for the circulation of the meeting documents;
- (l) any other agreement between the college members, including agreed indicators for identifying the early warning signs, potential risks and vulnerabilities;
- (m) a description of the framework for providing coordinated input to the resolution college, in particular for providing coordinated input without restriction for the purposes of the consultation process referred to in Articles 12, 13, 16, 18, 91 and 92 of Directive 2014/59/EU;
- (n) a description of the role of the consolidating supervisor in particular with regard to coordinating the provision of the input referred to in point (m) through the group-level resolution authority to the relevant resolution college;
- (o) provisions covering arrangements where a member or an observer terminates its participation in the college.

## Article 6

### Participation in college meetings and activities

1 When deciding which authorities shall participate in a college meeting or activity in accordance with Article 116(7) of Directive 2013/36/EU, the consolidating supervisor shall take into account the following:

- a the topics to be discussed and the objective of the meeting or activity, in particular with regard to their relevance for each group entity;
- b the importance of the group entity for the Member State where the group entity is authorised or established, and its importance for the group.

2 The consolidating supervisor and the members of the college shall ensure that the most appropriate representatives participate in the college meetings or activities, based on the topics discussed and objectives pursued. Those representatives shall have the power to commit their authorities as members of the college, to the maximum extent possible, for the decisions planned to be taken during the meetings or activities.



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#### Article 7

### Entrustment of tasks and delegation of responsibilities

1 When developing the college supervisory examination programme pursuant to Article 16, and updating it where necessary, the consolidating supervisor and the members of the college shall consider the possibility of agreements on voluntary entrustment of tasks and delegation of responsibilities pursuant to Article 116(1)(b) of Directive 2013/36/EU, especially if such entrustment or delegation is expected to lead to more efficient and effective supervision, in particular by removing unnecessary duplication of supervisory requirements, including those in relation to information requests.

2 The conclusion of an agreement on entrustment of tasks or delegation of responsibilities shall be notified by the consolidating supervisor to the EU parent undertaking, and by the competent authority, which delegates its powers, to the institution concerned.

#### Article 8

### Exchange of information between college members and a group of institutions

1 The consolidating supervisor shall be responsible for communicating to and requesting information from the EU parent undertaking. The members of the college shall be responsible for communicating to and requesting information from the institutions and branches under their supervisory remit.

2 When, exceptionally, a member of the college intends to communicate to or request information from the EU parent undertaking, it shall inform in advance the consolidating supervisor.

3 When, exceptionally, the consolidating supervisor intends to communicate to or request information from an institution or a branch outside its supervisory remit, it shall inform in advance the member of the college responsible for supervising this institution or branch.

## SECTION 2

### Planning and coordination of supervisory activities in going concern situations

#### Article 9

### General conditions with regard to exchange of information between the consolidating supervisor and college members

1 The consolidating supervisor and the members of the college shall exchange all information necessary to facilitate the exercise of the tasks referred to in Articles 112 and 113 of Directive 2013/36/EU, subject to the confidentiality requirements laid down in Section II of Chapter 1 in Title VII of that Directive, and where applicable, Articles 54 and 58 of Directive 2004/39/EC of the European Parliament and of the Council<sup>(7)</sup>.

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3 The consolidating supervisor and the members of the college shall exchange the information referred to in paragraphs 1 and 2, whether received from a group entity, a competent or supervisory authority or any other source, and in accordance with Article 7 of the Implementing Regulation (EU) 2016/99. That information shall be sufficiently adequate, accurate and timely.

### Article 10

#### Information exchange for performing group risk assessments and reaching joint decisions

1 For the purposes of joint decisions on institution-specific prudential requirements as referred to in Article 113 of Directive 2013/36/EU, the consolidating supervisor and the relevant members of the college referred to in paragraph 1 of that Article shall exchange all information necessary, at both individual and consolidated level, to reach a joint decision.

2 In particular, the consolidating supervisor and the relevant members of the college referred to in paragraph 1 shall exchange information on the outcomes of the supervisory review and evaluation process performed in accordance to Article 97 of Directive 2013/36/EU. This information shall provide the outcome of the assessment, at least, of the following elements:

- a business model analysis, including the assessment of the viability of current business model and sustainability of institution's forward-looking business strategy;
- b internal governance arrangements and institution-wide controls;
- c individual risks to institution's capital, covering the following elements:
  - (i) inherent individual risks;
  - (ii) risk management and controls;
- d capital adequacy assessment, including proposed required own funds pursuant to Article 104(1)(a) of Directive 2013/36/EU;
- e risks to institution's liquidity and funding, covering the following elements:
  - (i) liquidity risk and funding risk;
  - (ii) liquidity and funding risk management;
- f liquidity adequacy assessment, including proposed quantitative and qualitative liquidity measures pursuant to Article 105 of Directive 2013/36/EU;
- g other supervisory measures or early intervention measures taken or planned to be taken in order to address the inefficiencies identified as a result of the supervisory review and evaluation process;
- h results of the supervisory stress tests performed pursuant to Article 100 of Directive 2013/36/EU;
- i findings from on-site inspections and off-site monitoring that are relevant for the assessment of the risk profile of the group or any of its entities.

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## Article 11

### **Information exchange with regard to the ongoing review of the permission to use internal approaches and non-material extensions or changes in internal models**

1 For the purposes of ensuring coherence and coordination with regard to the ongoing review of the permission to use internal approaches as referred to in Article 101 of Directive 2013/36/EU, the consolidating supervisor and the relevant members of the college, who supervise institutions that have been granted permission to use internal approaches in accordance with Articles 143(1), Article 151(4) or (9), Article 283, Article 312(2), or Article 363 of Regulation (EU) No 575/2013, shall exchange all information on the outcome of this ongoing review and all other relevant information.

2 Where the consolidating supervisor or any relevant member of the college referred to in paragraph 1 has identified that an institution authorised in a Member State, including the EU parent undertaking, no longer meets all requirements for applying an internal approach or has identified weaknesses in accordance with Article 101 of Directive 2013/36/EU, they shall immediately exchange the following information, as applicable, for the purposes of facilitating the reach of common agreement as referred to in Article 8 of Implementing Regulation (EU) 2016/99:

- a assessment of the effect of the weaknesses identified and issues of non-compliance and their materiality;
- b assessment of the plan to restore compliance and to address the weaknesses identified as presented by the EU parent institution or any institution authorised in a Member State, including information on the timeline for its implementation;
- c information on the intention of the consolidating supervisor or of any relevant member of the college to revoke the permission or restrict the use of the model to compliant areas or those where compliance can be achieved within an appropriate timeline, or those areas that are not affected by the weaknesses identified;
- d information on any proposed additional own funds requirements pursuant to Article 104(2)(d) of Directive 2013/36/EU as a supervisory measure to address the issues of non-compliance or weaknesses identified.

3 The consolidating supervisor and the relevant members of the college referred to in paragraph 1 shall also exchange information regarding extensions or changes in these internal models which are not material model extensions or changes, as referred to in Article 13 of Commission Implementing Regulation (EU) 2016/100<sup>(8)</sup>.

4 Information referred to in paragraphs 1 and 2 shall be discussed and taken into account while developing the group risk assessment and reaching a joint decision in accordance with Article 113(1)(a) of Directive 2013/36/EU.

## Article 12

### **Information exchange on early warning signs, potential risks and vulnerabilities**

1 The consolidating supervisor and the members of the college participating in the development of a group risk assessment report referred to in Article 113(2)(a) of Directive 2013/36/EU or a group liquidity risk assessment report referred to in Article 113(2)(b) of that Directive for the purposes of reaching joint decisions on institution-specific prudential requirements in accordance with that Article shall exchange quantitative information aiming

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2 The information referred to in paragraph 1 shall be developed based on the information collected by the competent authorities in accordance with Implementing Regulation (EU) No 680/2014, in order to ensure consistency and comparability on the data used. This information shall cover at least all group entities authorised or established in a Member State, and at least the following areas:

- a capital;
- b liquidity;
- c asset quality;
- d funding;
- e profitability;
- f concentration risk.

3 The consolidating supervisor and the members of the college referred to in paragraph 1 shall also consider exchanging information on the macroeconomic environment in which the group of institutions and its group entities operate.

### *Article 13*

#### **Information exchange with regard to non-compliance and sanctions**

1 The members of the college shall communicate to the consolidating supervisor information regarding any situations in respect of which the members of the college have determined that an institution or a branch under their supervisory remit has not complied with national or Union law or with requirements, in relation to the prudential supervision or market conduct supervision of institutions, including the requirements laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU and any of the administrative penalties imposed or other administrative measures applied in accordance with Articles 64 to 67 of Directive 2013/36/EU when this information affects or is likely to affect the risk profile of the group or any of its group entities. The members of the college shall discuss with the consolidating supervisor the possible impact of these issues of non-compliance and sanctions for the group entities or for the group as a whole.

2 The consolidating supervisor shall decide to communicate information specified in paragraph 1 to the members of the college for whom this information is deemed relevant in accordance with Article 7 of Implementing Regulation (EU) 2016/99.

### *Article 14*

#### **Information exchange for the assessment of the group recovery plan**

1 The consolidating supervisor and the members of the college shall exchange all information necessary for those who participate in the process of joint decision on the elements referred to in Article 8(2) of Directive 2014/59/EU.

2 For the purposes of paragraph 1, the consolidating supervisor shall provide the group recovery plan to the members of the college following the procedure specified in Article 7 of Implementing Regulation (EU) 2016/99.

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4 The consolidating supervisor shall inform the group-level resolution authority about the timeline followed for the review and assessment of the group recovery plan and indicate a date for the group-level resolution authority to provide its recommendations, if any, in accordance to Article 6(4) of Directive 2014/59/EU.

#### Article 15

##### Information exchange with regard to group financial support agreements

The consolidating supervisor shall ensure that all members of the college are appropriately informed of the main terms of authorisations of group financial support agreements that have been granted in accordance with the joint decision process referred to in Article 20 of Directive 2014/59/EU.

#### Article 16

##### Establishment and update of the college supervisory examination programme

1 For the purposes of establishing the college supervisory examination programme in accordance with Article 116(1)(c) of Directive 2013/36/EU, the consolidating supervisor and the members of the college shall identify the supervisory activities to be undertaken.

2 The college supervisory examination programme shall contain at least the following:

- a the areas of joint work identified as a result of the group risk assessment and group liquidity risk assessment and joint decisions on institution-specific prudential requirements pursuant to Article 113 of Directive 2013/36/EU or as a result of any other college activities undertaken, including efforts to contribute to efficient supervision and to remove unnecessary duplication of tasks in accordance with Article 116(1)(d) of that Directive;
- b the respective supervisory examination programmes of the consolidating supervisor and the members of the college for the parent undertaking and for all institutions authorised and branches established in a Member State;
- c the areas of focus of the college work and its planned supervisory activities, including planned onsite inspections pursuant to Article 99(1)(c) of Directive 2013/36/EU;
- d the members of the college responsible for undertaking the planned supervisory activities;
- e the expected timelines, both in terms of timing and duration, for each of the planned supervisory activities.

3 The establishment and update of the college supervisory examination programme shall be performed pursuant to Article 11 of Implementing Regulation (EU) 2016/99.

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## **Planning and coordination of supervisory activities in preparation for and during emergency situations**

### *Article 17*

#### **Establishment of a college framework for emergency situations**

1 The consolidating supervisor and the members of the college shall establish a college framework in anticipation of possible emergency situations in accordance with Article 112(1) (c) of Directive 2013/36/EU (hereinafter ‘college framework for emergency situations’), taking into account the specificities and structure of the group of institutions.

2 The college framework for emergency situations shall include at least the following:

- a the college-specific procedures that shall apply where an emergency situation as referred to in Article 114(1) of Directive 2013/36/EU arises;
- b the minimum set of information that shall be exchanged where an emergency situation as referred to in Article 114(1) of Directive 2013/36/EU arises.

3 The minimum set of information referred to in point (b) of paragraph 2 shall include the following:

- a an outline of the situation that has occurred, including the underlying cause of the emergency situation, and the expected impact of the emergency situation on the group entities and the group as a whole, on the market liquidity and on the stability of the financial system;
- b an explanation of the measures and actions that have been taken or are planned to be taken, by the consolidation supervisor or any of the members of the college or by the group entities themselves;
- c the latest available quantitative information regarding liquidity and capital position of the group entities affected or likely to be affected by the emergency situation on an individual and consolidated basis.

### *Article 18*

#### **General conditions with regard to exchange of information during an emergency situation**

1 The consolidating supervisor and the members of the college shall exchange all information necessary to facilitate the exercise of the tasks referred to in Article 114(1) of Directive 2013/36/EU, subject to the confidentiality requirements laid down in Section II of Chapter 1 of Title VII of that Directive, and where applicable, Articles 54 and 58 of Directive 2004/39/EC.

2 Upon being alerted of an emergency situation by any member or observer of the college or having identified an emergency situation, the consolidating supervisor shall communicate the information referred to in Article 17(2)(b), following the procedures referred to in Article 17(2)(a), to the members of the college who supervise group entities that are affected or likely to be affected by the emergency situation, and the EBA.

3 Depending on the nature, severity, potential systemic impact or other impact, and likelihood of contagion of the emergency situation, the members of the college who supervise

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4 The consolidating supervisor shall consider whether the information referred to in paragraphs 2 and 3 is relevant for the performance of the tasks of the resolution college. In this case, the consolidating supervisor shall communicate this information to the group-level resolution authority as defined in point 44 of Article 2(1) of Directive 2014/59/EU.

5 The information referred to in paragraphs 2 and 3, where applicable, shall be updated immediately when new information is available.

6 When the exchange of information or communication referred to in this Article is made orally, the concerned competent authorities shall follow up it with written communication in a timely manner.

#### Article 19

### Coordination of the supervisory assessment of an emergency situation

1 Where an emergency situation occurs, the consolidating supervisor shall coordinate the assessment of the emergency situation (hereinafter 'coordinated supervisory assessment') in cooperation with the members of the college who supervise group entities that are affected or likely to be affected by that emergency situation.

2 The coordinated supervisory assessment of the emergency situation, performed in accordance with Article 14 of Implementing Regulation (EU) 2016/99, shall cover at least the following elements:

- a the nature and severity of the emergency situation;
- b the impact or potential impact of the emergency situation on the group and on any of its affected or likely to be affected group entities;
- c the risk of cross-border contagion.

3 When assessing point (c) of paragraph 2, the consolidating supervisor shall consider the potential systemic consequences in any of the Members States where entities of the group are authorised or where significant branches are established.

#### Article 20

### Coordination of the supervisory response to an emergency situation

1 Where an emergency situation occurs, the consolidating supervisor shall coordinate the development of a supervisory response to the emergency situation (hereinafter 'coordinated supervisory response' in cooperation with the members of the college who supervise group entities that are affected or likely to be affected by that emergency situation.

2 The coordinated supervisory assessment referred to in Article 19 shall form the basis of the coordinated supervisory response, which shall define the supervisory actions needed, their scope, and the timetable for their implementation.

3 The coordinated supervisory response shall be developed by the consolidating supervisor and the members of the college who supervise group entities that are affected or likely to be affected by the emergency situation.

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### Article 21

#### **Monitoring of the implementation of the coordinated supervisory response to an emergency situation**

1 The consolidating supervisor and the members of the college who supervise group entities that are affected or likely to be affected by the emergency situation shall monitor and exchange information on the implementation of the coordinated supervisory response referred to in Article 20.

2 The information to be exchanged shall include at least an update on the implementation of the agreed actions within the foreseen timeline, as referred to in Article 20(2), and the need to update or adjust these actions.

### Article 22

#### **Coordination of external communication in an emergency situation**

1 Within the framework of applicable Union and national law, the consolidating supervisor and the members of the college who supervise group entities that are affected or likely to be affected by the emergency situation shall coordinate to the extent possible their external communications.

2 For the purpose of coordinating external communication, the consolidating supervisor and the members of the college shall agree on the following elements:

- a the allocation of responsibilities for coordinating external communication at the different stages of the emergency situation;
- b the level of information to be disclosed taking into account the need to maintain market confidence and any other additional disclosure obligations where financial instruments issued by group entities affected or likely to be affected by the emergency situation are publicly traded in one or more regulated markets in the Union;
- c the coordination of public statements, including those made by only one member of the college, in particular where these are likely to have consequences for group entities supervised by other members of the college;
- d the allocation of responsibilities and appropriate timing for contacting group entities;
- e the allocation of responsibilities and actions to be taken for communicating externally the coordinated actions taken to address the emergency situation;
- f a description of possible coordination with another group or college that may be involved in dealing with an emergency situation affecting the group, such as a crisis management group or a resolution college.



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## CONDITIONS REGARDING THE FUNCTIONING OF COLLEGES FORMED IN ACCORDANCE WITH ARTICLE 51(3) OF DIRECTIVE 2013/36/EU

### SECTION 1

#### *Establishment and functioning of colleges*

##### *Article 23*

#### **Designation of the members and observers of a college**

1 Following the performance of the mapping of the institution with branches in other Member States pursuant to Article 2 of Implementing Regulation (EU) 2016/99, the competent authorities of the home Member State shall invite the following authorities to become members of the college:

- a the competent authorities of the host Member States where significant branches are established;
- b the ESCB central banks of Member States that are involved in accordance with their national law in the prudential supervision of the significant branches referred to in point a, but which are not competent authorities;
- c the EBA.

2 The competent authorities of the home Member State may invite the competent authorities of host Member States where non-significant branches are established to participate in the college as observers in accordance with the process determined in Article 3(1)(b) of Implementing Regulation (EU) 2016/99.

3 The competent authorities of the home Member State may invite the supervisory authorities of third countries where branches of the relevant institution are established to participate in the college as observers in accordance with the process determined in Article 3(1)(c) of Implementing Regulation (EU) 2016/99.

4 The competent authorities of the home Member State may invite the following authorities to participate in the college as observers in accordance with the process determined in Article 3(1)(d) of Implementing Regulation (EU) 2016/99:

- a the ESCB central banks which are not empowered by national law to supervise the institution or its branches established in a Member State;
- b the public authorities or bodies in a Member State which are responsible for or involved in the supervision of the institution or its branches, including competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection.

5 The competent authorities of the home Member State and the members of the college shall specify the arrangements covering the participation of the observers in the college in the written arrangements referred to in Article 51(3) of Directive 2013/36/EU. The competent authorities of the home Member State shall notify these arrangements to the observers.

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#### Article 24

### Communication of the setting up and composition of a college

The competent authorities of the home Member State shall communicate to the institution the establishment of a college and the identity of its members and observers, as well as any changes in that composition.

#### Article 25

### Establishment of the written coordination and cooperation arrangements

The establishment and functioning of colleges for significant branches formed in accordance with Article 51(3) of Directive 2013/36/EU shall be based on written coordination and cooperation arrangements to be determined in accordance with Article 5 of this Regulation.

#### Article 26

### Participation in college meetings and activities

1 When deciding which authorities shall participate in a college meeting or activity in accordance with Article 51(3) of Directive 2013/36/EU, the competent authorities of the home Member State shall take into account the following:

- a the topics to be discussed and the objective of the meeting or activity, in particular with regards to their relevance for each branch;
- b the importance of the branch in the Member State where it is established and its importance for the institution.

2 The competent authorities of the home Member State and the members of the college shall ensure that the most appropriate representatives participate in the college meetings or activities, based on the topics discussed and objectives pursued. Those representatives shall have the power to commit their authorities as members of the college, to the maximum extent possible, for the decisions planned to be taken during the meetings or activities.

3 The competent authorities of the home Member State may invite representatives of the institution to participate in a college meeting or activity, based on the topics and objectives of the college meeting or activity.

#### Article 27

### Conditions for communication

1 The communication with the institution and its branches shall be organised according to the supervisory responsibilities given to the competent authorities of the home Member State and the members of the college by Chapter 4 of Title V and Title VII of Directive 2013/36/EU.

2 The college meetings and activities shall be organised in accordance with Article 18 of Implementing Regulation (EU) 2016/99.

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## ***Planning and coordination of supervisory activities in going concern situations***

### *Article 28*

#### **General conditions with regard to exchange of information between the competent authorities of the home Member State and college members**

1 The competent authorities of the home Member State and the members of the college shall exchange all information necessary to facilitate the cooperation under Article 50 and Article 51(2) of Directive 2013/36/EU.

2 The competent authorities of the home Member State and the members of the college shall also exchange all information necessary to facilitate the cooperation referred to in Articles 6, 7 and 8 of Directive 2014/59/EU.

3 The competent authorities of the home Member State and the members of the college shall exchange the information referred to in paragraphs 1 and 2, whether received from the institution, a competent or supervisory authority or any other source. This information shall be sufficiently adequate, accurate and timely.

### *Article 29*

#### **Information exchange for the outcome of the supervisory review and evaluation process**

The information to be communicated by the competent authorities of the home Member State to the members of the college shall cover the information referred to in Article 4, Article 5, Articles 7 to 13 and Article 17 of Commission Delegated Regulation (EU) No 524/2014<sup>(9)</sup> as a result of the supervisory review and evaluation process performed in accordance with Article 97 of Directive 2013/36/EU.

### *Article 30*

#### **Information exchange for the assessment of the recovery plan**

1 The competent authorities of the home Member State shall consult the competent authorities of the host Member States where significant branches are established on the recovery plan in so far as is relevant to that branch, in accordance with Article 6(2) of Directive 2014/59/EU.

2 For the purposes of paragraph 1, the competent authorities of the home Member State shall provide the recovery plan of the institution to the competent authorities of the host Member States where significant branches are established in accordance with Article 19 of Implementing Regulation (EU) 2016/99.

3 The competent authorities of the home Member State shall ensure that all members of the college are appropriately informed of the outcome of the process referred to in paragraph 1.

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### Article 31

#### **Establishment and update of the college supervisory examination programme**

1 For the purposes of establishing the college supervisory examination programme referred to in Article 99 of Directive 2013/36/EU, the competent authorities of the home Member State and the members of the college shall identify the supervisory activities to be undertaken.

2 The college supervisory examination programme shall contain at least the following:

- a the areas of joint work identified as a result of the supervisory review and evaluation process pursuant to Article 97 of Directive 2013/36/EU or as a result of any other college activities undertaken;
- b the areas of focus of the college work and its planned supervisory activities, including planned on-the-spot checks and inspections of the significant branches pursuant to Article 52(3) of Directive 2013/36/EU;
- c the members of the college responsible for undertaking the planned supervisory activities;
- d the expected timelines, both in terms of timing and duration, for each of the planned supervisory activities.

3 When developing the college supervisory examination programme, and updating it where necessary, the competent authorities of the home Member State and the members of the college shall consider the possibility of agreements on voluntary entrustment of tasks and delegation of responsibilities, especially if such entrustment or delegation is expected to lead to more efficient and effective supervision, in particular by removing unnecessary duplication of supervisory requirements, including those in relation to information requests.

4 The conclusion of an agreement on entrustment of tasks or delegation of responsibilities shall be notified by the competent authorities of the home Member State to the institution concerned, and by the competent authority, which delegates its powers, to the branch concerned.

5 The establishment and update of the college supervisory examination programme shall be performed pursuant to Article 20 of Implementing Regulation (EU) 2016/99.

### SECTION 3

#### ***Planning and coordination of supervisory activities in preparation for and during emergency situations and final provisions***

### Article 32

#### **Establishment of a college framework for emergency situations**

1 The competent authorities of the home Member State and the members of the college shall establish a college framework in anticipation of possible emergency situations in accordance with Article 112(1)(c) of Directive 2013/36/EU (hereinafter 'college framework for emergency situations').

2 The college framework for emergency situations shall include at least the following:

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- the college-specific procedures that shall apply where an emergency situation as referred to in Article 114(1) of Directive 2013/36/EU arises;
- b the minimum set of information that shall be exchanged where an emergency situation as referred to in Article 114(1) of Directive 2013/36/EU arises.
- 3 The minimum set of information referred to in point (b) of paragraph 2 shall include the following:
- a an outline of the situation that has occurred, including the underlying cause of the emergency situation, and the expected impact of the emergency situation on the institution, on the market liquidity and on the stability of the financial system;
  - b an explanation of the measures and actions that have been taken or are planned to be taken, by the competent authorities of the home Member State or any of the members of the college or by the institution itself;
  - c the latest available quantitative information regarding liquidity and capital position of the institution.

### Article 33

#### **General conditions with regard to exchange of information during an emergency situation**

1 The competent authorities of the home Member State and the members of the college shall exchange all information necessary to facilitate the exercise of the tasks referred to in Article 114(1) of Directive 2013/36/EU, subject to the confidentiality requirements laid down in Section II of Chapter 1 of Title VII of that Directive, and where applicable, Articles 54 and 58 of Directive 2004/39/EC.

2 Upon being alerted of an emergency situation by any member or observer of the college or having identified an emergency situation, the competent authorities of the home Member State shall communicate the information referred to in Article 32(2)(b), following the procedures referred to in Article 32(2)(a), to the members of the college who supervise branches that are affected or likely to be affected by the emergency situation, and the EBA.

3 Depending on the nature, severity, potential systemic impact or other impact, and likelihood of contagion of the emergency situation, the members of the college who supervise branches that are affected or likely to be affected by the emergency situation and the competent authorities of the home Member State may decide to exchange additional information.

4 The competent authorities of the home Member State shall consider whether the information referred to in paragraphs 2 and 3 is relevant for the performance of the tasks of the resolution college. In this case, the competent authorities of the home Member State shall communicate this information to the resolution authority as referred to in Article 3 of Directive 2014/59/EU.

5 The information referred to in paragraphs 2 and 3, where applicable, shall be updated immediately when new information is available.

6 When the exchange of information or communication referred to in this Article is made orally, the concerned competent authorities shall follow up it with written communication in a timely manner.

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#### Article 34

### Coordination of the supervisory assessment of an emergency situation

1 Where an emergency situation occurs, the competent authorities of the home Member State shall coordinate the assessment of the emergency situation (hereinafter ‘coordinated supervisory assessment’) in cooperation with the members of the college pursuant to Article 112(3) of Directive 2013/36/EU.

2 The coordinated supervisory assessment of the emergency situation, prepared by the competent authorities of the home Member State, shall cover at least the following elements:

- a the nature and severity of the emergency situation;
- b the impact or potential impact of the emergency situation on the institution and on any of its affected or likely to be affected branches;
- c the risk of cross-border contagion.

3 When assessing point (c) of paragraph 2, the competent authorities of the home Member State shall consider the potential systemic consequences in any of the Members States where significant branches are established.

#### Article 35

### Coordination of the supervisory response to an emergency situation

1 Where an emergency situation occurs, the competent authorities of the home Member State shall coordinate the development of a supervisory response to the emergency situation (hereinafter ‘coordinated supervisory response’ in cooperation with the members of the college pursuant to Article 112(3) of Directive 2013/36/EU.

2 The coordinated supervisory assessment referred to in Article 34 shall form the basis of the coordinated supervisory response, which shall define the supervisory actions needed, their scope, and the timetable for their implementation.

#### Article 36

### Monitoring of the implementation of the coordinated supervisory response to an emergency situation

1 The competent authorities of the home Member State and the members of the college who supervise branches that are affected or likely to be affected by the emergency situation shall monitor and exchange information on the implementation of the coordinated supervisory response referred to in Article 35.

2 The information to be exchanged shall include at least an update on the implementation of the agreed actions within the foreseen timeline, as referred to in Article 35(2), and the need to update or adjust these actions.

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**Changes to legislation:** Commission Delegated Regulation (EU) 2016/98 is up to date with all changes known to be in force on or before 28 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) EUR 2016 No. 98 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes

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#### Article 37

### **Coordination of external communication in an emergency situation**

The competent authorities of the home Member State and the members of the college responsible for the supervision of branches affected or likely to be affected by an emergency situation shall coordinate to the extent possible their external communications, taking into account the elements specified under Article 22(2), as well as legal obligations or constraints under national law.

#### Article 38

### **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, 16 October 2015.

*For the Commission*

*The President*

Jean-Claude JUNCKER

- Changes to legislation:** Commission Delegated Regulation (EU) 2016/98 is up to date with all changes known to be in force on or before 28 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) EUR 2016 No. 98 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes
- (1) [OJ L 176, 27.6.2013, p. 338.](#)
  - (2) 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 ([OJ L 173, 12.6.2014, p. 190.](#))
  - (3) 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. 1.](#))
  - (4) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council ([OJ L 191, 28.6.2014, p. 1.](#))
  - (5) Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to Directive 2013/36/EU of the European Parliament and of the Council (see page 21 of this Official Journal).
  - (6) 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 ([OJ L 176, 27.6.2013, p. 1.](#))
  - (7) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([OJ L 145, 30.4.2004, p. 1.](#))
  - (8) Commission Implementing Regulation (EU) 2016/100 of 16 October 2015 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (see page 45 of this Official Journal).
  - (9) Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another ([OJ L 148, 20.5.2014, p. 6.](#))



**Changes to legislation:**

Commission Delegated Regulation (EU) 2016/98 is up to date with all changes known to be in force on or before 28 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. EUR 2016 No. 98 may be subject to amendment by EU Exit Instruments made by both the [Prudential Regulation Authority](#) and the [Financial Conduct Authority](#) under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s.

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

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