Commission Delegated Regulation (EU) 2020/2176 of 12 November 2020 amending Delegated Regulation (EU) No 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/2176

of 12 November 2020

amending Delegated Regulation (EU) No 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[(1)], and in particular the third subparagraph of Article 36(4), thereof,

Whereas:

(1) The provisions concerning the treatment of prudently valued software assets, the value of which is not materially affected by the resolution, insolvency or liquidation of an institution, were amended by Regulation (EU) 2019/876 of the European Parliament and of the Council[(2)] to further support the transition towards a more digitalised banking sector. Regulation (EU) 2019/876 also introduced Article 36(4) into Regulation (EU) No 575/2013, which requires the European Banking Authority ('EBA') to develop the draft regulatory technical standards specifying the application of the deductions related to software assets from Common Equity Tier 1 items. To ensure coherence of the provisions related to own funds and to facilitate their application, it is appropriate to incorporate those regulatory technical standards into Commission Delegated Regulation (EU) No 241/2014[(3)], which groups all technical standards concerning own funds.

(2) Competent authorities are not prevented from scrutinising the software assets that an institution includes in capital on a case-by-case basis and from exercising their supervisory powers in accordance with Article 64 of Directive 2013/36/EU of the European Parliament and the Council[(4)], in particular where the stock of investments in software could result in an undesired prudential benefit or where the degree of judgement stemming from the applicable accounting framework is suspected to be used by an institution to circumvent this Regulation.

(3) Due to the diversity in software used by institutions, it is difficult to assess, in a general way, which software assets could have a recoverable value in case of a resolution, insolvency or liquidation, and, if so, to what extent, or to identify a specific category of software that would preserve its value even in such a scenario.

(4) Moreover, an assessment by EBA of specific cases of past transactions suggests that all software assets, without a distinction of specific categories, have the same likelihood of being written off. Even in those cases where the value of software assets is at least in part preserved, generally the useful life of such software is revised to take into account that such software will be kept in use by the acquirer of an institution only until the end of a migration process. Such migration process, the collected evidence shows, typically ranges between one and three years. That pattern should be reflected in the prudential treatment of software assets.

(5) Given the limited value software assets appear to have in case of a resolution, insolvency or liquidation of an institution, it is essential that the prudential treatment of such assets strikes an appropriate balance between, on the one hand, prudential concerns, and, on the other hand, the value of those assets from a business and an economic perspective. The prudential treatment of software assets should thus entail a certain margin of conservatism on the relief in Common Equity Tier 1 capital requirements.

(6) In addition, in order not to introduce additional operational burdens for the institutions and to facilitate supervision by the competent authorities, the prudential treatment of software assets should be simple to implement and applicable to all institutions in a standardised manner. The standardised prudential treatment should not prevent an institution from continuing to fully deduct its software assets from Common Equity Tier 1 items.

(7) Given the rapid changes in technology, institutions often invest in maintenance, enhancements or upgrades of their software. To mitigate any risk of regulatory arbitrage, those investments should be amortised separately from the software that is maintained, enhanced or upgraded, provided that those investments are recognised as an intangible asset on the balance sheet of the institution under the applicable accounting framework.

(8) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.

(9) This Regulation is based on the draft regulatory technical standards submitted to the Commission by EBA.

(10) 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(5)].

(11) Given the accelerated uptake of digital services as a consequence of the COVID-19 pandemic, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 241/2014

Delegated Regulation (EU) No 241/2014 is amended as follows:

(1) in Article 1, point (f) is replaced by the following:

(f) the application of the deductions from Common Equity Tier 1 items and other deductions for Common Equity Tier 1, Additional Tier 1 and Tier 2 items in accordance with paragraphs 2 and 4 of Article 36 of Regulation (EU) No 575/2013;;

(2) the following Article 13a is inserted:

Article 13a

Deduction of software assets that are classified as intangible assets for accounting purposes for the purposes of Article 36(1), point (b), of Regulation (EU) No 575/2013

1 Software assets that are intangible assets as defined in Article 4(1), point (115), of Regulation (EU) No 575/2013 shall be deducted from Common Equity Tier 1 items in accordance with paragraphs 5 to 8 of this Article. The amount to be deducted shall be determined on the basis of the prudential accumulated amortisation calculated in accordance with paragraphs 2, 3 and 4 of this Article.

2 Institutions shall calculate the amount of the prudential accumulated amortisation of the software assets referred to in paragraph 1 by multiplying the amount obtained from the calculation referred in point (a) by the number of days referred to in point (b):

a the amount at which the software asset has been initially recognised on the balance sheet of the institution under the applicable accounting framework, divided by the lower of:

(i) the number of days of useful life of the software asset, as estimated for accounting purposes;

(ii) three years, expressed in days, starting from the date referred to in paragraph 3;

b the number of days elapsed since the date referred to in paragraph 3, provided that this does not exceed the period referred in point (a) of this paragraph.

3 The prudential accumulated amortisation referred to in paragraph 1 shall be calculated starting from the date on which the software asset is available for use and begins to be amortised for accounting purposes.

4 By way of derogation from paragraph 3, where a software asset has been acquired from any undertaking, including a non-financial sector entity, that is part of the same group as the institution, the prudential accumulated amortisation referred to in paragraph 1 shall be calculated from the date on which that software asset began to be amortised under the applicable accounting framework on that undertaking's balance sheet.

5 Institutions shall deduct from Common Equity Tier 1 items the amount resulting from the difference, if positive, between the amount in point (a) and the amount in point (b):

a the prudential accumulated amortisation of a software asset calculated in accordance with paragraphs 2, 3 and 4;

b the sum of the accumulated amortisation and any accumulated impairment losses of that software asset recognised on that institution's balance sheet under the applicable accounting framework.

6 By way of derogation from paragraph 5, until the date on which the software asset is available for use and begins to be amortised for accounting purposes, institutions shall deduct from Common Equity Tier 1 items the full amount at which the software asset is recognised on that institution's balance sheet under the applicable accounting framework.

7 The prudential amortisations and deductions set out in this Article shall be made separately for each software asset.

8 Institutions' investments in maintaining, enhancing or upgrading existing software assets shall be treated as assets other than the related software assets, provided that those investments are recognised as an intangible asset on that institution's balance sheet under the applicable accounting framework.

Without prejudice to paragraph 6, the prudential accumulated amortisation of those investments in maintaining, enhancing or upgrading existing software assets shall be calculated from the date on which they begin to be amortised under the applicable accounting framework.

The prudential accumulated amortisation of related existing software assets shall continue to be calculated from the date of their own initial amortisation for accounting purposes and until the end of the period of the prudential amortisation determined in accordance with point (a) of paragraph 2..

Article 2

Entry into force

This Regulation shall enter into force on the 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, 12 November 2020.

For the Commission

The President

Ursula VON DER LEYEN

(**1**) OJ L 176, 27.6.2013, p. 1.

(**2**) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

(**3**) Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

(**4**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 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 (OJ L 176, 27.6.2013, p. 338).

(**5**) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).