

**COMMISSION DELEGATED REGULATION (EU) 2016/467****of 30 September 2015****amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance <sup>(1)</sup>, and in particular Article 31(4), Article 75(2) and (3), Article 92(1a), Article 111(1)(b), (c), and (m) and Article 308b(13) thereof,

Whereas:

- (1) The Investment Plan for Europe, adopted by the Commission in November 2014, focuses on removing obstacles to investment, providing visibility and technical assistance to investment projects and making smarter use of new and existing financial resources. As part of this plan, the set-up of a European Fund for Strategic Investments (EFSI) through Regulation (EU) 2015/1017 of the European Parliament and of the Council <sup>(2)</sup>, aims to overcome the current investment gap in the EU by mobilising private financing for strategic investments which the market cannot finance alone. It will support strategic investments in infrastructure as well as risk finance for small businesses. Simultaneously, work on the establishment of a Capital Markets Union will deepen financial integration and help increase growth and competitiveness in the EU.
- (2) In order to contribute to these aims, as well as to the Union's objective of long-term sustainable growth, investments by insurers, which are large institutional investors, in infrastructure or through EFSI, should be facilitated. To facilitate such investment, a new asset class for infrastructure investments should be established within the framework established by Directive 2009/138/EC. Parallel implementation of this type of initiative together with EFSI, should increase the overall impact for growth and jobs in the Union.
- (3) The Commission requested and received technical advice from the European Insurance and Occupational Pensions Authority as regards the criteria and calibration of the new asset class for infrastructure investments.
- (4) In line with the objective of the Investment Plan for Europe to support investment that helps strengthen Europe's infrastructure, with a particular focus on building a more interconnected single market, the new infrastructure asset class should not be limited to specific sectors or physical structures, but include all systems and networks that provide and support essential public services.
- (5) To ensure that the infrastructure asset class is effectively delimited to infrastructure investments, qualifying infrastructure assets should be owned, financed, developed or operated by an infrastructure project entity that does not perform any other function.
- (6) The new infrastructure asset class should be framed by criteria that ensure that infrastructure investments exhibit a sound risk profile with respect to their stress resilience, predictability of cash flows and protection provided by the contractual framework. Where it can be evidenced that infrastructure investments exhibit a better risk profile than other corporate investments, the risk charges in the spread and equity risk sub-modules of the standard formula should be reduced.

<sup>(1)</sup> OJ L 335, 17.12.2009, p. 1.

<sup>(2)</sup> Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

- (7) The infrastructure project entity should provide a contractual framework that ensures a high degree of protection to its investors, including provisions against losses from the termination of the project by the party that has agreed to purchase goods and services, as could be triggered by the termination of a purchase agreement. Sufficient financial arrangements should be in place to cover the contingency funding and working capital requirements.
- (8) In order to reduce the risk to lenders, a sufficient degree of control over the infrastructure project entity should be established, including security in assets and equity, as well as limiting the use of cash flows and activities.
- (9) Where the calibration for investments in bonds and loans is reduced based on the assumption that most infrastructure investments are held to maturity, the insurance or reinsurance undertaking should be able to demonstrate that it is able to do so.
- (10) In order to incentivise infrastructure investments with high recovery rates, the new asset class should be limited to investment grade debt, and only to senior debt where no external assessment is available. Nevertheless, to remain consistent with the framework for equities established by Directive 2009/138/EC, the inclusion of infrastructure equity in this new asset class should not depend on the existence or the level of any external assessment of the infrastructure entity.
- (11) Where no external assessment by a nominated external credit assessment institution (ECAI) for an investment in qualifying infrastructure is available, additional criteria should apply in order to ensure that the investment is subject to limited risk. Those criteria should provide for professional management of the project in its construction phase, ensure adequate mitigation of construction risk, limit operating and refinancing risk, and prohibit the project from entering into speculative derivative positions.
- (12) Where no external assessment by a nominated ECAI for an investment in qualifying infrastructure is available, it should be ensured that the infrastructure project is subject to a stable political environment.
- (13) Projects based on innovative technology or design should be eligible to fall within the scope of this new asset class, to ensure that the EU can continue to strive to be at the forefront of technological developments as they evolve. To ensure that projects based on innovations are safe, insurers should carry out appropriate due diligence to verify that technology is tested. This can include prototype testing, pilot testing and other forms of testing to demonstrate that the project has sound technology and design.
- (14) Overall, the combination of these criteria, based on EIOPA's technical advice, ensures that a prudentially sound system is in place, as those infrastructure assets that benefit from a reduction in capital requirements are safer and less volatile than comparable corporate investments.
- (15) EIOPA has analysed data on infrastructure equity indices, listed infrastructure equities and private finance initiative companies. In conclusion, a range of 30 %-39 % for the infrastructure stress was advised. In line with the objective of the Investment Plan for Europe to foster investment in the real economy, a calibration of 30 % is chosen for the new infrastructure asset class, as this calibration provides most effective incentives to invest in infrastructure.
- (16) In line with EIOPA's advice, the symmetric adjustment of the equity capital charge should be applied to the stress factor on infrastructure equities on a pro rata basis.
- (17) The reduction of risk charges in the spread risk sub-module should account for the fact that evidence is available to show that infrastructure investments exhibit better recovery rates than corporate debt and are less sensitive to broader economic factors. Consequently, for the new asset class, the stress to the credit component of the spread should be reduced in line with the calibration provided by EIOPA. To take account of the qualifying criterion that infrastructure investments can be held to maturity, also the stress to the liquidity component of the spread should be reduced.
- (18) Where the stress to the liquidity component of the spread is reduced for qualifying infrastructure investments, this reduction should also apply to assets in the matching adjustment portfolio, however without any double counting of reduced liquidity risk. For this reason, the spread stress applicable to qualifying infrastructure assets in the matching adjustment portfolio should be either the reduced stress applicable to matching adjustment assets or the spread stress for qualifying infrastructure assets, whichever is the lower.

- (19) A more appropriate treatment of insurance and reinsurance undertakings' investment in funds established by Regulation (EU) 2015/760 of the European Parliament and of the Council <sup>(1)</sup> should be ensured, in line with the treatment of investments in European Venture Capital Funds and in European Social Entrepreneurship Funds already provided for in Article 168 of Commission Delegated Regulation (EU) 2015/35 <sup>(2)</sup>.
- (20) In recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). Directive 2014/65/EU of the European Parliament and of the Council <sup>(3)</sup> ensures that MTFs are subject to similar requirements as regulated markets regarding whom they may admit as members or participants. Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(4)</sup> also imposes similar transparency requirements to MTFs and regulated markets. In order to account for the increased relevance of MTFs and the convergence of rules applicable to MTFs and regulated markets alike, exposures traded on a MTF should be considered as equity type 1 in the equity risk sub-module.
- (21) Directive 2014/51/EU of the European Parliament and of the Council <sup>(5)</sup> introduced a transitional measure applicable to equity investments purchased before 1 January 2016. In order to avoid setting incentives for significant disinvestment from unlisted equities before the framework established by Directive 2009/138/EC becomes applicable, the scope of the transitional measure should not be limited to listed equities.
- (22) To allow for a proportionate treatment of equities held within collective investment undertakings or investments packaged as funds, where the look-through approach is not possible, this Regulation further specifies that the transitional measure set out in Article 308b(13) of Directive 2009/138/EC shall apply to the proportion of equities held within the collective investment undertaking or investment packaged as funds in accordance with the target underlying asset allocation on 1 January 2016, provided the target allocation is available to the undertaking. This allows undertakings to estimate the proportion of equities purchased by the fund manager before 1 January 2016, where tracing these purchases is not possible because of limitations imposed by disclosure rules, or is prohibitively costly. Thereafter, the proportion of equities to which the transitional measure is applied shall be reduced annually in proportion to the asset turnover ratio of the collective investment undertaking or investment packaged as funds.
- (23) Delegated Regulation (EU) 2015/35 includes several minor drafting errors which should be amended accordingly.
- (24) In particular, Delegated Regulation (EU) 2015/35 sets out the valuation method for holdings in related undertakings that are excluded from the scope of group supervision or deducted from the own funds eligible for the group solvency. The consequences in terms of valuation for holdings in related undertakings should be the same, irrespective of the reason for excluding a given related undertaking from the scope of group supervision and as a result, all situations where a related undertaking may be excluded from the scope of group supervision should be captured. Therefore, Article 13 should be amended.
- (25) Regarding strategic participations in financial and credit institutions, where reference is made to method 1 of Directive 2002/87/EC of the European Parliament and of the Council <sup>(6)</sup> this should not mean that the group must also qualify as a conglomerate and be subject to supplementary supervision pursuant to that Directive. To apply the exemption, it is sufficient that the financial or credit institution is included in the calculation of group solvency pursuant to Directive 2009/138/EC. Both the consolidation methods in Directive 2002/87/EC and in

<sup>(1)</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

<sup>(2)</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

<sup>(3)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>(4)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>(5)</sup> Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 153, 22.5.2014, p. 1).

<sup>(6)</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

Directive 2009/138/EC are deemed equivalent, as stated in Article 8 of Commission Delegated Regulation (EU) No 342/2014 <sup>(1)</sup>. Therefore, Article 68(3) of Delegated Regulation (EU) 2015/35 should be amended.

- (26) As regards aggregate statistical data, the time periods for reporting shall be aligned and therefore disclosures before 31 December 2020 shall include data of all previous years starting from 1 January 2016. Therefore, Article 316(2) of Delegated Regulation (EU) 2015/35 should be amended.
- (27) Delegated Regulation (EU) 2015/35 also contains a number of typographical errors, such as wrong internal cross-references, which should be corrected.
- (28) In applying the requirements set out in this Regulation, account should be taken of the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking. The burden and complexity imposed on insurance undertakings should be proportionate to their risk profile. In applying the requirements set out in this Regulation, information should be considered material if that information could influence the decision-making or judgement of the intended users of that information.
- (29) In order to enhance legal certainty about the supervisory regime before the Solvency II regime becomes fully applicable on 1 January 2016, it is important to ensure that this Regulation enters into force as soon as possible,

HAS ADOPTED THIS REGULATION:

#### Article 1

### Amending provisions

Commission Delegated Regulation (EU) 2015/35 is amended as follows:

- (1) in Article 1, the following points 55a and 55b are inserted:

‘55a. “Infrastructure assets” means physical structures or facilities, systems and networks that provide or support essential public services.

55b. “Infrastructure project entity” means an entity which is not permitted to perform any other function than owning, financing, developing or operating infrastructure assets, where the primary source of payments to debt providers and equity investors is the income generated by the assets being financed.’;

- (2) Article 13 is amended as follows:

- (a) in paragraph 2, point (a) is replaced by the following:

‘(a) undertakings that are excluded from the scope of the group supervision under Article 214(2) of Directive 2009/138/EC’;

- (b) paragraph 6 is replaced by the following:

‘6. Where the criteria referred to in Article 9(4) of this Regulation are satisfied, and where the use of the valuation methods referred to in points (a) and (b) of paragraph 1 is not possible, holdings in related undertakings may be valued based on the valuation method the insurance or reinsurance undertakings uses for preparing its annual or consolidated financial statements. In such cases, the participating undertaking shall deduct from the value of the related undertaking the value of goodwill and other intangible assets that would be valued at zero in accordance with Article 12(2) of this Regulation.’;

<sup>(1)</sup> Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates (OJ L 100, 3.4.2014, p. 1).

(3) in Article 68, paragraph 3 is replaced by the following:

‘3. Notwithstanding paragraphs 1 and 2, insurance and reinsurance undertakings shall not deduct strategic participations as referred to in Article 171 which are included in the calculation of the group solvency on the basis of method 1 as set out in Annex I to Directive 2002/87/EC or on the basis of method 1 as set out in Article 230 of Directive 2009/138/EC.’;

(4) in Title I, Chapter V, Section 5, the following Subsection 1a is inserted:

‘Subsection 1a

### **Qualifying infrastructure investments**

*Article 164a*

#### **Qualifying infrastructure investments**

1. For the purposes of this Regulation, qualifying infrastructure investment shall include investment in an infrastructure project entity that meets the following criteria:

- (a) the infrastructure project entity can meet its financial obligations under sustained stresses that are relevant for the risk of the project;
- (b) the cash flows that the infrastructure project entity generates for debt providers and equity investors are predictable;
- (c) the infrastructure assets and infrastructure project entity are governed by a contractual framework that provides debt providers and equity investors with a high degree of protection including the following:
  - (a) where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the contractual framework shall include provisions that effectively protect debt providers and equity investors against losses resulting from the termination of the project by the party which agrees to purchase the goods or services provided by the infrastructure project entity;
  - (b) the infrastructure project entity has sufficient reserve funds or other financial arrangements to cover the contingency funding and working capital requirements of the project;

Where investments are in bonds or loans, this contractual framework shall also include the following:

- (i) debt providers have security to the extent permitted by applicable law in all assets and contracts necessary to operate the project;
  - (ii) equity is pledged to debt providers such that they are able to take control of the infrastructure project entity prior to default;
  - (iii) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;
  - (iv) contractual restrictions on the ability of the infrastructure project entity to perform activities that may be detrimental to debt providers, including that new debt cannot be issued without the consent of existing debt providers;
- (d) where investments are in bonds or loans, the insurance or reinsurance undertaking can demonstrate to the supervisor that it is able to hold the investment to maturity;
  - (e) where investments are in bonds for which a credit assessment by a nominated ECAI is not available, the investment instrument is senior to all other claims other than statutory claims and claims from derivatives counterparties;
  - (f) where investments are in equities, or bonds or loans for which a credit assessment by a nominated ECAI is not available, the following criteria are met:
    - (i) the infrastructure assets and infrastructure project entity are located in the EEA or in the OECD;

- (ii) where the infrastructure project entity is in the construction phase the following criteria shall be fulfilled by the equity investor, or where there is more than one equity investor, the following criteria shall be fulfilled by a group of equity investors as a whole:
  - the equity investors have a history of successfully overseeing infrastructure projects and the relevant expertise,
  - the equity investors have a low risk of default, or there is a low risk of material losses for the infrastructure project entity as a result of the their default,
  - the equity investors are incentivised to protect the interests of investors;
- (iii) the infrastructure project entity has established safeguards to ensure completion of the project according to the agreed specification, budget or completion date;
- (iv) where operating risks are material, they are properly managed;
- (v) the infrastructure project entity uses tested technology and design;
- (vi) the capital structure of the infrastructure project entity allows it to service its debt;
- (vii) the refinancing risk for the infrastructure project entity is low;
- (viii) the infrastructure project entity uses derivatives only for risk-mitigation purposes.

2. For the purposes of paragraph 1(b), the cash flows generated for debt providers and equity investors shall not be considered predictable unless all except an immaterial part of the revenues satisfies the following conditions:

- (a) one of the following criteria is met:
  - (i) the revenues are availability-based;
  - (ii) the revenues are subject to a rate-of-return regulation;
  - (iii) the revenues are subject to a take-or-pay contract;
  - (iv) the level of output or the usage and the price shall independently meet one of the following criteria:
    - it is regulated,
    - it is contractually fixed,
    - it is sufficiently predictable as a result of low demand risk;
- (b) where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the party which agrees to purchase the goods or services provided by the infrastructure project entity shall be one of the following:
  - (i) an entity listed in Article 180(2) of this Regulation;
  - (ii) a regional government or local authority listed in the Regulation adopted pursuant to Article 109a(2)(a) of Directive 2009/138/EC;
  - (iii) an entity with an ECAI rating with a credit quality step of at least 3;
  - (iv) an entity that is replaceable without a significant change in the level and timing of revenues.;

(5) Article 168 is amended as follows:

- (a) paragraphs 1, 2 and 3 are replaced by the following:

'1. The equity risk sub-module referred to in point (b) of the second subparagraph of Article 105(5) of Directive 2009/138/EC shall include a risk sub-module for type 1 equities, a risk sub-module for type 2 equities and a sub-risk module for qualifying infrastructure equities.'

2. Type 1 equities shall comprise equities listed in regulated markets in countries which are members of the European Economic Area (EEA) or the Organisation for Economic Cooperation and Development (OECD), or traded on multilateral trading facilities, as referred to in Article 4(1)(22) of Directive 2014/65/EU, whose registered office or head office is in EU Member States.

3. Type 2 equities shall comprise equities other than those referred to in paragraph 2, commodities and other alternative investments. They shall also comprise all assets other than those covered in the interest rate risk sub-module, the property risk sub-module or the spread risk sub-module, including the assets and indirect exposures referred to in Article 84(1) and (2) where a look-through approach is not possible and the insurance or reinsurance undertaking does not make use of the provisions in Article 84(3).;

(b) the following paragraph 3a is inserted:

‘3a. Qualifying infrastructure equities shall comprise equity investments in infrastructure project entities that meet the criteria set out in Article 164a.’;

(c) paragraph 4 is replaced by the following:

‘4. The capital requirement for equity risk shall be equal to the following:

$$SCR_{equity} = \sqrt{SCR_{type1equities}^2 + 2 \cdot 0,75 \cdot SCR_{type1equities} \cdot (SCR_{type2equities} + SCR_{quinf}) + (SCR_{type2equities} + SCR_{quinf})^2}$$

where:

- (a)  $SCR_{type1equities}$  denotes the capital requirement for type 1 equities;
- (b)  $SCR_{type2equities}$  denotes the capital requirement for type 2 equities;
- (c)  $SCR_{quinf}$  denotes the capital requirement for qualifying infrastructure equities.’;

(d) paragraph 6 is amended as follows:

(i) points (a) and (b) are replaced by the following:

- ‘(a) equities, other than qualifying infrastructure equities, held within collective investment undertakings which are qualifying social entrepreneurship funds as referred to in Article 3(b) of Regulation (EU) No 346/2013 of the European Parliament and of the Council (\*) where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking;
- (b) equities, other than qualifying infrastructure equities, held within collective investment undertakings which are qualifying venture capital funds as referred to in Article 3(b) of Regulation (EU) No 345/2013 of the European Parliament and of the Council (\*\*) where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking;

(\*) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

(\*\*) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).;

(ii) in point (c), point (i) is replaced by the following:

- ‘(i) equities, other than qualifying infrastructure equities, held within such funds where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the alternative investment fund.’;

(iii) the following point (d) is added:

- ‘(d) equities, other than qualifying infrastructure equities, held within collective investment undertakings which are authorised as European long-term investment funds pursuant to Regulation (EU) 2015/760 where the look through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking.’;

(6) in Article 169, the following paragraph 3 is added:

‘3. The capital requirement for qualifying infrastructure equities referred to in Article 168 of this Regulation shall be equal to the loss in the basic own funds that would result from the following instantaneous decreases:

- (a) an instantaneous decrease equal to 22 % in the value of qualifying infrastructure equity investments in related undertakings within the meaning of Article 212(1)(b) and 212(2) of Directive 2009/138/EC where these investments are of a strategic nature;
- (b) an instantaneous decrease equal to the sum of 30 % and 77 % of the symmetric adjustment as referred to in Article 172 of this Regulation in the value of qualifying infrastructure equities other than those referred to in point (a).’;

(7) in Article 170, the following paragraph 3 is added:

‘3. Where an insurance or reinsurance undertaking has received supervisory approval to apply the provisions set out in Article 304 of Directive 2009/138/EC, the capital requirement for qualifying infrastructure equities shall be equal to the loss in the basic own funds that would result from an instantaneous decrease:

- (a) equal to 22 % in the value of the qualifying infrastructure equity corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC;
- (b) equal to 22 % in the value of qualifying infrastructure equity investments in related undertakings within the meaning of Article 212(1)(b) and (2) of Directive 2009/138/EC, where these investments are of a strategic nature;
- (c) equal to the sum of 30 % and 77 % of the symmetric adjustment as referred to in Article 172 of this Regulation in the value of qualifying infrastructure equities other than those referred to in points (a) or (b).’

(8) in Article 171, the introductory sentence is replaced by the following:

‘For the purposes of Article 169(1)(a), (2)(a) and (3)(a) and of Article 170(1)(b), (2)(b) and (3)(b), equity investments of a strategic nature shall mean equity investments for which the participating insurance or reinsurance undertaking demonstrates the following:’;

(9) Article 173 is replaced by the following:

*Article 173*

#### **Criteria for the use of transitional measure for standard equity risk**

1. The transitional measure for standard equity risk set out in Article 308b(13) of Directive 2009/138/EC shall only apply to equities that were purchased on or before 1 January 2016 and which are not subject to the duration-based equity risk pursuant to Article 304 of that Directive.

2. Where equities are held within an collective investment undertaking or other investments packaged as funds, and where the look-through approach is not possible, the transitional measure set out in Article 308b(13) of Directive 2009/138/EC shall be applied to the proportion of equities held within the collective investment undertaking or investment packaged as funds in accordance with the target underlying asset allocation on 1 January 2016, provided the target allocation is available to the undertaking. The proportion of equities to which the transitional is applied shall be reduced annually in proportion to the asset turnover ratio of the collective investment undertaking or investment packaged as funds. Where the target allocation for equity investments of the collective investment undertaking or investment packaged as funds increases, the proportion of equities the transitional is applied to shall not increase.’;

(10) in Article 180, the following paragraphs 11, 12 and 13 are added:

‘11. Exposures in the form of bonds and loans that fulfil the criteria set out in paragraph 12 shall be assigned a risk factor  $stress_i$ , depending on the credit quality step and the duration of the exposure according to the following table:

Credit quality step		0		1		2		3	
Duration ( $dur_i$ )	$stress_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$
up to 5	$b_i \cdot dur_i$	—	0,64 %	—	0,78 %	—	1,0 %	—	1,67 %
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	3,2 %	0,36 %	3,9 %	0,43 %	5,0 %	0,5 %	8,35 %	1,0 %
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	5,0 %	0,36 %	6,05 %	0,36 %	7,5 %	0,36 %	13,35 %	0,67 %
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	6,8 %	0,36 %	7,85 %	0,36 %	9,3 %	0,36 %	16,7 %	0,67 %
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	8,6 %	0,36 %	9,65 %	0,36 %	11,1 %	0,36 %	20,05 %	0,36 %

12. The criteria for exposures that are assigned a risk factor in accordance with paragraph 11 shall be:

(a) the exposure relates to a qualifying infrastructure investment that meets the criteria set out in Article 164a;

(b) the exposure is not an asset that fulfils the following conditions:

— it is assigned to a matching adjustment portfolio in accordance with Article 77b(2) of Directive 2009/138/EC,

— it has been assigned a credit quality step between 0 and 2;

(c) a credit assessment by a nominated ECAI is available for the exposure;

(d) the exposure has been assigned a credit quality step between 0 and 3.

13. Exposures in the form of bonds and loans that meet the criteria set out in paragraph 12(a) and (b), but do not meet the criteria set out in paragraph 12(c), shall be assigned a risk factor  $stress_i$  equivalent to credit quality step 3 and the duration of the exposure in accordance with the table set out in paragraph 11.’

(11) The last sentence of Article 181(b) shall be replaced by the following:

‘For assets in the assigned portfolio for which no credit assessment by a nominated ECAI is available, and for qualifying infrastructure assets that have been assigned credit quality step 3, the reduction factor shall be 100 %.’

(12) the following Article 261a is inserted:

‘Article 261a

#### **Risk management for qualifying infrastructure investments**

1. Insurance and reinsurance undertakings shall conduct adequate due diligence prior to making a qualifying infrastructure investment, including all of the following:

(a) a documented assessment of how the project satisfies the criteria set out in Article 164a, which has been subject to a validation process, carried out by persons that are free from influence from those persons responsible for the assessment of the criteria, and have no potential conflicts of interest with those persons;

(b) a confirmation that any financial model for the cash flows of the project has been subject to a validation process carried out by persons that are free from influence from those persons responsible for the development of the financial model, and have no potential conflicts of interest with those persons.

2. Insurance and reinsurance undertakings with a qualifying infrastructure investment shall regularly monitor and perform stress tests on the cash flows and collateral values supporting the infrastructure project entity. Any stress tests shall be commensurate with the nature, scale and complexity of the risk inherent in the infrastructure project.

3. Where insurance or reinsurance undertakings hold material qualifying infrastructure investments, they shall, when establishing the written procedures referred to in Article 41(3) of Directive 2009/138/EC, include provisions for an active monitoring of these investments during the construction phase, and for a maximisation of the amount recovered from these investments in case of a work-out scenario.

4. Insurance or reinsurance undertakings with a qualifying infrastructure investment in bonds or loans shall set up their asset-liability management to ensure that, on an ongoing basis, they are able to hold the investment to maturity.;

(13) in Article 316, paragraph 2 is replaced by the following:

‘2. As of 31 December 2020, the disclosure shall include data of the four previous years. In relation to disclosure before 31 December 2020, it shall include data of all previous years starting from 1 January 2016.’

## Article 2

### Correcting provisions

Delegated Regulation (EU) 2015/35 is corrected as follows:

1. in Article 73(1), the first sentence is replaced by the following:

‘The features referred to in Article 72 shall be either those set out in points (a) to (i) or those set out in point (j).’;

2. Article 170 is corrected as follows:

(a) in paragraph 1, point (a) is replaced by the following:

‘(a) an instantaneous decrease equal to 22 % in the value of the type 1 equities corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC.’;

(b) in paragraph 2, point (a) is replaced by the following:

‘(a) equal to 22 % in the value of the type 2 equities corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC.’;

3. Article 176 is corrected as follows:

(a) paragraph 3 is replaced by the following:

‘3. Bonds or loans for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor  $stress_i$  depending on the credit quality step and the modified duration  $dur_i$  of the bond or loan  $i$  according to the following table.

Credit quality step		0		1		2		3		4		5 and 6	
Duration ( $dur_i$ )	$stress_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$
up to 5	$b_i \cdot dur_i$	—	0,9 %	—	1,1 %	—	1,4 %	—	2,5 %	—	4,5 %	—	7,5 %
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	4,5 %	0,5 %	5,5 %	0,6 %	7,0 %	0,7 %	12,5 %	1,5 %	22,5 %	2,5 %	37,5 %	4,2 %

Credit quality step		0		1		2		3		4		5 and 6	
Duration ( $dur_i$ )	$stress_i$	$a_i$	$b_i$	$a_i$	$b_i$								
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	7,0 %	0,5 %	8,5 %	0,5 %	10,5 %	0,5 %	20,0 %	1,0 %	35,0 %	1,8 %	58,5 %	0,5 %
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	9,5 %	0,5 %	11 %	0,5 %	13,0 %	0,5 %	25,0 %	1,0 %	44,0 %	0,5 %	61,0 %	0,5 %
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	12,0 %	0,5 %	13,5 %	0,5 %	15,5 %	0,5 %	30,0 %	0,5 %	46,6 %	0,5 %	63,5 %	0,5 %

(b) paragraph 4 is replaced by the following:

'4. Bonds and loans for which a credit assessment by a nominated ECAI is not available and for which debtors have not posted collateral that meets the criteria set out in Article 214 shall be assigned a risk factor  $stress_i$  depending on the duration  $dur_i$  of the bond or loan  $i$  according to the following table:

Duration ( $dur_i$ )	$stress_i$
up to 5	$3 \% \cdot dur_i$
More than 5 and up to 10	$15 \% + 1,7 \% \cdot (dur_i - 5)$
More than 10 and up to 20	$23,5 \% + 1,2 \% \cdot (dur_i - 10)$
More than 20	$\min(35,5 \% + 0,5 \% \cdot (dur_i - 20); 1)$

4. in Article 179, paragraph 1 is corrected as follows:

(a) the introductory sentence is replaced by the following:

'The capital requirement  $SCR_{cd}$  for spread risk on credit derivatives other than those referred to in paragraph 3 shall be equal to the higher of the following capital requirements:';

(b) point (a) is replaced by the following:

'(a) the loss in the basic own funds that would result from an instantaneous increase in absolute terms of the credit spread of the instruments underlying the credit derivatives;'

5. in Article 192, paragraph 2, in subparagraph 5, the formula is replaced by the following:

$$LGD = \max(90 \% \cdot (Recoverables + 50 \% \cdot RM_r) - F' \cdot Collateral; 0);$$

6. in Article 218, paragraph 3 is replaced by the following:

'3. Where insurance or reinsurance undertakings have concluded several excess of loss reinsurance contracts that each meet the requirements set out in point (d) of paragraph 2, and that in combination meet the requirements set out in points (a), (b) and (c) of paragraph 2, their combination shall be considered as one recognisable excess of loss reinsurance contract.';

7. in Article 296, paragraph 4 is replaced by the following:

'4. The solvency and financial condition report shall include information on the areas set out in Article 263 in complying with the disclosure requirements of the insurance or reinsurance undertaking as laid down in paragraphs 1 and 3 of this Article.';

8. in Article 317, paragraph 3 is replaced by the following:

'3. Aggregated annual statistical data concerning the supervised undertakings and groups in accordance with Article 316 shall be disclosed in respect of each calendar year within three months after the date by which the undertakings having a financial year ending 31 December are required by Article 312(1)(c) to submit annual quantitative templates. Information concerning the supervisory authorities shall be made available within four months after the 31 December of each calendar year.'

9. in Article 330, paragraph 1 is replaced by the following:

'1. In assessing whether certain own funds eligible to cover the Solvency Capital Requirement of a related insurance or reinsurance undertaking, a related third country insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company cannot effectively be made available to cover the group Solvency Capital Requirement, the supervisory authorities shall consider all of the following elements:

- (a) whether the own-fund item is subject to legal or regulatory requirements that restrict the ability of that item to absorb all types of losses wherever they arise in the group;
- (b) whether there are legal or regulatory requirements that restrict the transferability of assets to another insurance or reinsurance undertaking;
- (c) whether making those own funds available for covering the group Solvency Capital Requirement would not be possible within a maximum of 9 months;
- (d) whether, where method 2 is used, the own-fund item does not satisfy the requirements set out in Articles 71, 73 and 77; for this purpose, the term "Solvency Capital Requirement" in those Articles shall include both the Solvency Capital Requirement of the related undertaking that has issued the own fund item and the group Solvency Capital Requirement.'

10. in Article 375, paragraph 2 is replaced by the following:

'2. Participating insurance and reinsurance undertakings, insurance holding companies or mixed financial holding companies shall submit to the group supervisor the information referred to in paragraph 1 no later than 26 weeks after the reference date of the opening financial statement as referred to in Article 314(1)(a).';

11. Annex XVII is corrected in accordance with Annex I to this Regulation;

12. Annex XVIII is corrected in accordance with Annex II to this Regulation;

13. Annex XXI is corrected in accordance with Annex III to this Regulation.

### Article 3

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, 30 September 2015.

For the Commission  
The President  
Jean-Claude JUNCKER

## ANNEX I

Annex XVII to Delegated Regulation (EU) 2015/35 is amended as follows:

(1) Part B is amended as follows:

(a) point (2)(c) shall be replaced by the following:

‘(c) where the premium risk method is applied to replace the standard parameters referred to in Article 218(1)(a)(ii) and (c)(ii), the aggregated losses and earned premiums are not adjusted for recoverable from reinsurance contracts and special purpose vehicles or reinsurance premiums;’

(b) in point (2)(d) the first sentence shall be replaced by the following:

‘where the premium risk method is applied to replace the standard parameters referred to in Article 218(1)(a)(i) and (c)(i):’.

(2) In point (5) of part D, the first sentence and first formula shall be replaced by the following:

‘The mean squared error of prediction shall be equal to the following:

$$MSEP = \sum_{i=1}^I \hat{C}_{(i,J)}^2 \cdot \left( \frac{\hat{Q}_{I-i}}{C_{(i,I-i)}} + \frac{\hat{Q}_{I-i}}{S_{I-i}} + \sum_{j=I-i+1}^{J-1} \frac{C_{(I-j,j)}}{S'_j} \cdot \frac{\hat{Q}_j}{S_j} \right) + 2 \cdot \sum_{i=1}^I \sum_{k=i+1}^I \hat{C}_{(i,J)} \cdot \hat{C}_{(k,J)} \cdot \left( \frac{\hat{Q}_{I-i}}{S_{I-i}} + \sum_{j=I-i+1}^{J-1} \frac{C_{(I-j,j)}}{S'_j} \cdot \frac{\hat{Q}_j}{S_j} \right);$$

(3) Point (3)(f) of part F shall be replaced by the following:

‘(f) where the recognisable excess of loss reinsurance contract referred to in Article 218(2) provides compensation only up to a specified limit,  $b_2$  denotes the amount of that limit.’.

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*ANNEX II*

Annex XVIII to Delegated Regulation (EU) 2015/35 is amended as follows:

(1) In point (2)(b) of part C, the first sentence shall be replaced by the following:

‘they include each of the following sub-modules of the standard formula excluding those within the scope of the partial internal model.’

(2) Point (2)(c) of part C shall be replaced by the following:

‘(c) they include the counterparty default risk module of the standard formula unless it is within the scope of the partial internal model.’

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*ANNEX III*

Annex XXI to Delegated Regulation (EU) 2015/35 is amended as follows:

(1) The last sentence of part A shall be replaced by the following:

‘The information set out in paragraphs 1 to 32 shall be provided in relation to the end of the last calendar year. In relation to paragraphs 12 to 21, 23, 24 and 29 to 31 the information shall relate to the financial year-ends of insurance and reinsurance undertakings and insurance groups which ended in the last calendar year.’

(2) The last sentence of part B shall be replaced by the following:

‘The information set out in paragraphs 2 to 18 shall be provided in relation to the last calendar year.’

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