

COMMISSION DELEGATED REGULATION (EU) No 1152/2014**of 4 June 2014****supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates****(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 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 ⁽¹⁾, and in particular the third subparagraph of Article 140(7) thereof,

Whereas:

- (1) The calculation of the institution-specific countercyclical capital buffer rates requires that the location of the own funds requirements for all credit exposures of a specific institution, including exposures held in the trading book and all securitisation exposures, are identified geographically.
- (2) The geographical location should be determined in the basis of the location of the risk of the exposures. That will ensure that the build-up of additional reserves from implementing the countercyclical buffer is allocated to the financial system with excess credit growth.
- (3) The place of residence of the obligor or of the debtor should be generally used for determining the geographical location of all credit exposures as this is considered to best reflect the location where the risk is situated and which is, therefore, of importance to the financial system. However, the geographical location of credit exposures identified as specialised lending exposures pursuant to Article 147(8) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽²⁾ should be based on the location of the assets generating the income that is the primary source of repayment of the obligation.
- (4) For a clear and unambiguous understanding of the measures for the identification of the geographical location of the relevant credit exposures, it is essential to specify a list of definitions of the technical terms used in this Regulation.
- (5) Exposures to a legal person should, in principle, be allocated to the Member State or to the third country, in which that person has its registered office. However, the place of actual centre of administration and the place of registered office of a legal person might differ. This has been recognised by the Court in its rulings in cases C-81/87 (Daily Mail), C-212/97 (Centros), C-208/00 (Überseering), C-167/01 (Inspire Art), C-411/03 (Sevic) and C-210/06 (Cartesio). To ensure proper allocation of the countercyclical capital buffer in those cases, institutions, who are aware that such a discrepancy exists with regard to an obligor, should allocate the relevant exposures to the place of the actual centre of the administration of the relevant legal person.
- (6) For exposures to collective investment undertakings (CIU), it is appropriate that they are allocated in the location of the obligor of the underlying exposure as defined in this Regulation. Where the definition of the obligor of the underlying exposure is unreasonably burdensome, the exposure to the CIU may be allocated to the home Member State of the institution.
- (7) Exposures to other assets should be allocated to the home Member State of the institution, if their obligor cannot be identified.

⁽¹⁾ 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).

⁽²⁾ 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).

- (8) Proportionality and materiality considerations should be taken into account for institutions with limited foreign overall exposure or limited trading book activity, by allowing the use of simpler allocation methods for these institutions. This is intended to alleviate the burden for smaller institutions which tend to have limited foreign and trading book activity.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (10) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, it has 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 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

- (1) 'general credit exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(a) of Directive 2013/36/EU;
- (2) 'trading book exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(b) of Directive 2013/36/EU;
- (3) 'securitisation exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(c) of Directive 2013/36/EU;
- (4) 'location of the obligor' means the Member State or the third country, where the natural or legal person, who is the institution's counterparty to a general credit exposure or the issuer of a financial instrument not included in the trading book or the counterparty to a non-trading book exposure, is ordinarily resident (in the case of a natural person), or has its registered office (in the case of a legal person); for a legal person whose centre of actual administration is in a Member State or in a third country other than the Member State or the country of its registered office, 'location of the obligor' means the Member State or the third country of its actual place of administration;
- (5) 'location of the debtor' means the Member State or the third country, where the natural or legal person who is the issuer of the financial instrument in the trading book, or the counterparty to a trading book exposure, is ordinarily resident (in the case of a natural person), or has its registered office (in the case of a legal person); for a legal person whose centre of actual administration is in a Member State or in a third country other than the state or the country of its registered office, 'location of the debtor' means the Member State or the third country of its actual place of administration;
- (6) 'location of the income' means the Member State or the third country of the location of the assets which generate the income that is the primary source of repayment of the obligation in relation to a specialised lending exposure;
- (7) 'foreign exposure' means a general credit exposure whose obligor is not located in the institution's home Member State;
- (8) 'specialised lending exposure' means the general credit exposures possessing the characteristics referred to in Article 147(8) of Regulation (EU) No 575/2013.

Article 2

Location of general credit exposures

- (1) All general credit exposures, which do not fall under paragraphs 2 to 5 of this Article, shall be allocated to the location of the obligor.

⁽¹⁾ 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).

- (2) General credit exposures to CIUs as referred to in point (o) of Article 112 of Regulation (EU) No 575/2013, shall be allocated to the location of the obligor of the underlying exposures. If there is more than one location corresponding to the obligors of the underlying exposures of a given CIU exposure, Article 4(2) of this Regulation may also apply to that CIU exposure.
- (3) Specialised lending exposures as referred to in Article 147(8) of Regulation (EU) No 575/2013 shall be allocated to the location of the income.
- (4) General credit exposures to other items as referred to in point (q) of Article 112 of Regulation (EU) No 575/2013 shall be allocated to the institution's home Member State if the institution cannot identify their obligor.
- (5) The following general credit exposures may be allocated to an institution's home Member State:
- (a) exposures to CIUs as referred to in point (o) of Article 112 of Regulation (EU) No 575/2013, where the institution cannot identify the location of the obligor or obligors of the underlying exposures based on information existing internally or available externally without disproportionate effort;
 - (b) foreign exposures, whose aggregate does not exceed 2 % of the aggregate of the general credit, trading book and securitisation exposures of that institution. The aggregate of the general credit, trading book and securitisation exposures is calculated by excluding the general credit exposures located in accordance with point (a) of this paragraph and with paragraph 4.
- (6) Institutions shall calculate the percentage referred to in point (b) of paragraph 5, both on an annual and on an ad hoc basis. An ad hoc calculation is required when an event that affects the financial or economic situation of the institution occurs.

Article 3

Geographical location of trading book exposures

- (1) Subject to paragraphs 2 and 3, trading book exposures shall be allocated to the location of the debtor.
- (2) For trading book exposures subject to the own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013, institutions shall determine their geographical location by multiplying their aggregate risk exposure amount by the ratio below:
- (a) the own funds requirements for sub-portfolios split according to the geographical location determined according to the model provided in Chapter 5 of Title IV of Part Three of Regulation (EU) No 575/2013 to
 - (b) the sum of own funds requirements determined under point (a) across all geographical locations.
- (3) Institutions, whose total trading book exposures does not exceed 2 % of their total general credit, trading book and securitisation exposures, may allocate those exposures to the home Member State of the institution.
- (4) Institutions shall calculate the percentage referred to in paragraph 3, both on an annual and on an ad hoc basis. An ad hoc calculation is required when an event that affects the financial or economic situation of the institution occurs.

Article 4

Geographical location of securitisation exposures

- (1) A securitisation exposure shall be allocated to the location of the obligor of the underlying exposures.
- (2) Where there is more than one location corresponding to the obligor of the underlying exposures of a given securitisation exposure, that exposure may be allocated to the location of the obligor of the underlying exposures with the highest proportion in the underlying securitisation exposures.

(3) Securitisation exposures for which information on underlying securitisation exposures is not available, may be allocated to the home Member State of the institution if the institution cannot identify the underlying obligor based on existing available information from internal or external sources or without applying a disproportionate effort to obtain the information.

Article 5

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, 4 June 2014.

For the Commission

The President

José Manuel BARROSO
