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# Commission Delegated Regulation (EU) 2019/348 of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) 2019/348

## of 25 October 2018

## supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions

## (Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council,[(1)] and in particular Article 4(6) thereof,

Whereas:

(1) To determine whether Member States should grant institutions in their jurisdictions simplified obligations, Article 4(1) of Directive 2014/59/EU requires those Member States to ensure that competent and resolution authorities assess the impact that the failure of an institution could have due to a number of factors specified in that article.

(2) That assessment should be distinct from, and should not predetermine, any other assessment to be made by resolution authorities, including, in particular, any assessment of the resolvability of an institution or group, or of whether the conditions for resolution referred to in Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council[(2)] are satisfied.

(3) The specification of the criteria referred to in Article 4(1) of Directive 2014/59/EU should be practical, efficient and effective. The impact that the failure of an institution can have should therefore be assessed, first on the basis of quantitative criteria and subsequently on the basis of qualitative criteria. In general, the assessment based on qualitative criteria should only be conducted where the assessment on the basis of quantitative criteria does not lead to the conclusion that, in the light of the impact that the institution's failure could have, full obligations, rather than merely simplified obligations, are required.

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(4) To ensure a convergent and effective application of this Regulation, competent and resolution authorities should assess the quantitative criteria against a Union common threshold in the form of a total quantitative score. Competent and resolution authorities should calculate that total quantitative score in accordance with a set of indicators, using the values from the applicable supervisory reporting framework laid down in Implementing Regulation (EU) No 680/2014[(3)].

(5) To ensure a desirable balance in terms of the expected ratio of institutions ineligible for simplified obligations within Member States and the distribution of ineligible institutions across Member States, the Union threshold for the total quantitative score for credit institutions should in principle be established at 25 basis points. However, competent and resolution authorities should be able to raise or lower the threshold of 25 basis points and set it within the range of 0 to 105 basis points, depending on the specificities of the Member State's banking sector. A highly concentrated banking sector may justify a higher threshold, whereas a large number of small institutions combined with a small number of large institutions may lead to a lower threshold. The threshold should strike the right balance between the cumulative value of total assets of credit institutions that could be eligible for simplified obligations in a given Member State and of credit institutions that would be ineligible based on the quantitative assessment.

(6) Competent and resolution authorities should use appropriate proxies based on the national generally accepted accounting principles (GAAP) where they do not receive the indicator values from institutions as a part of supervisory reporting. Competent or resolution authorities should be able to assign a value of zero to the relevant indicators where the identification of proxies would be excessively cumbersome. That possibility should however be limited to institutions not reporting template 20 on the basis of Article 5(a)(4) of Implementing Regulation (EU) No 680/2014, due to their not exceeding the threshold referred to in that Article.

(7) To ensure that the approach taken in this Regulation fully complies with the principle of proportionality and to eliminate any disproportionate burden, it should be possible for small credit institutions to be quantitatively assessed on the basis of their size only. Competent and resolution authorities should therefore be able to conclude that the failure of a small credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without applying the total quantitative score, provided that their qualitative assessment supports that conclusion. For those small credit institutions, the assessment of the qualitative criteria should also be conducted in a proportionate manner.

(8) To ensure the effectiveness and efficiency of the assessment of the impact of institutions' failure on financial markets, other institutions or funding conditions, the specification of quantitative and qualitative criteria should build upon terms and categories already laid down in Directive 2013/36/EU of the European Parliament and of the Council[(4)].

(9) In particular, pursuant to Article 131(2) of Directive 2013/36/EU, G-SIIs are identified as such on the basis of, inter alia, their size, interconnectedness with the financial system, complexity and cross-border activity. Since those criteria overlap to a large extent with the criteria of Article 4(1) of Directive 2014/59/EU, competent and

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resolution authorities should be able to decide that a G-SII's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(10) Further, pursuant to Article 131(3) of Directive 2013/36/EU, O-SIIs are identified as such on the basis of, inter alia, their size, their importance for the economy of the Union or of the relevant Member State, the significance of their cross-border activities and their interconnectedness with the financial system. Since those criteria are very similar to the criteria of Article 4(1) of Directive 2014/59/EU, competent and resolution authorities should be able to decide that an O-SII's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(11) Moreover, Article 107(3) of Directive 2013/36/EU requires the European Banking Authority (EBA) to issue guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) in accordance with Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(5)]. Competent authorities and financial institutions, to which those guidelines are addressed, are required to make every effort to comply with them. The categorisation under the EBA SREP guidelines by competent authorities should therefore be taken into account in the context of the assessment referred to in Article 4(1) of Directive 2014/59/EU. Competent authorities classify institutions into four categories. The first category (SREP Category 1) is comprised of G-SIIs and O-SIIs and, where appropriate, of other institutions categorised as such by a competent authority on the basis of their size, internal organisation, and the nature, scope and complexity of their activities. Accordingly, where the competent authority has determined that an institution falls within SREP Category 1, competent and resolution authorities should be able to decide that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(12) To ensure a consistent assessment of institutions, it is necessary to specify a minimal list of considerations on the basis of which competent and resolution authorities should perform their qualitative assessments, without preventing those authorities from taking into account other relevant considerations. The minimal list of qualitative considerations should refer to circumstances indicating that the failure of an institution could have a significant negative effect on financial markets, other institutions or funding conditions.

(13) In the light of the diverse range of investment firms covered by Directive 2014/59/EU and the need not to pre-empt the ongoing work at Union level on the review of the prudential requirements for those firms, this Regulation should only specify the indicators that competent and resolution authorities should take into account to assess the criterion of size. Those authorities should set the weights assigned to those indicators and determine the relevant thresholds.

(14) An institution belonging to a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU (cross-border group) is highly

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interconnected and its activities are much more complex than those of a stand-alone institution. The impact of the failure of an institution belonging to a cross-border group is thus likely to be more significant. Competent and resolution authorities should therefore conclude that the failure of an institution belonging to a cross-border group would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the assessments at the level of the individual Member States where the group has a presence concludes so. To achieve this, competent and resolution authorities should coordinate their assessments and exchange all necessary information, within the structure of the Banking Union and within the framework of supervisory and resolution colleges.

(15) Competent and resolution authorities should be able to decide that the failure of certain institutions would not be likely to have a significant negative impact as referred to in Article 4(1) of Directive 2014/59/EU, even when their total quantitative score reaches the predetermined threshold. That different treatment of those institutions should be justified by their exceptional characteristics. The first such group consists of promotional banks the purpose of which is to advance the public policy objectives of a Member State's central or regional government or local authority through the provision of promotional loans on a non-competitive, not-for-profit basis. The loans that those institutions grant are directly or indirectly guaranteed by the central or regional government or the local authority. Promotional banks may thus be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that conclusion is in line with the qualitative assessment performed for those promotional banks. The second group consists of credit institutions that have been subject to an orderly winding-up process. Since an orderly winding-up process in general prevents new business, credit institutions that have been subject to such a process may also be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that this is in line with the qualitative assessment performed for those credit institutions.

(16) Having regard to the different purposes of recovery and resolution planning, competent and resolution authorities from the same Member State should be able to reach different conclusions to their assessments performed in accordance with this Regulation. In particular, they may make different decisions while setting thresholds for the total quantitative score, applying special treatment for promotional banks and institutions subject to an orderly winding-up process, as well as reach different conclusions on the possibility to grant simplified obligations. In those cases, competent and resolution authorities should regularly assess whether the difference remains justified.

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

(18) EBA has conducted an open public consultation 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,

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HAS ADOPTED THIS REGULATION:

*Article 1*

**Quantitative assessment for credit institutions**

1 Competent authorities and resolution authorities shall assess the impact of the failure of a credit institution on financial markets, on other institutions or on funding conditions on the basis of a total quantitative score calculated in accordance with Annex I. They shall do so on a regular basis and at least every two years.

2 A credit institution with a total quantitative score equal to or higher than 25 basis points shall be regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

3 Competent and resolution authorities may raise or lower the threshold referred to in paragraph 2 within the range of 0 to 105 basis points. Competent and resolution authorities shall keep the amended threshold under regular review.

4 Where the indicator values of Annex I are not available, the assessment referred to in paragraph 1 shall be made on the basis of proxies correlated to the greatest extent possible with the indicators as specified in Annex III.

5 Where a credit institution does not exceed the threshold specified in Article 5(a)(4) of Implementing Regulation (EU) No 680/2014 and does not submit Template 20 of that Regulation, competent and resolution authorities may assign a value of zero to the relevant indicators specified in Annex III.

6 Where the total assets of a credit institution do not exceed 0,02 % of the total assets of all credit institutions authorised and, where relevant data are available, of branches established in the Member State, including Union branches, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless that would not be justified on the basis of Article 2.

7 Where a credit institution has been identified as a G-SII or an O-SII under Article 131(1) of Directive 2013/36/EU or classified as Category 1 on the basis of the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 5 of this Article, establish that the failure of that credit institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. The relevant indicator values for those institutions shall, in any event, still be taken into account for determining the aggregate amount referred to in point 2 of Annex I, and for determining the total assets of all credit institutions authorised in the Member State for the purpose of paragraph 6.

*Article 2*

**Qualitative assessment for credit institutions**

1 Where, pursuant to Article 1, a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions, competent and resolution authorities shall assess the impact of that credit institution's failure on financial markets, other institutions or funding