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Commission Delegated Regulation (EU) 2017/180 of 24 October 2016 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for benchmarking portfolio assessment standards and assessment-sharing procedures (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/180

of 24 October 2016

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for benchmarking portfolio assessment standards and assessment-sharing procedures

(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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[(1)], and in particular the third subparagraph of Article 78(7) thereof,

Whereas:

(1) It is necessary to lay down standards for the assessment by competent authorities of the internal approaches adopted by institutions' calculating own funds requirements and set out detailed rules in respect of the procedures for sharing of those assessments between competent authorities empowered to monitor the range of risk-weighted exposure amounts or own funds requirements by institutions permitted to use internal approaches for the calculation of those amounts or own fund requirements.

(2) The assessment of the quality of advanced approaches of institutions allows for the comparison of internal approaches at the Union level, whereby the European Banking Authority (EBA) assists competent authorities with their assessment of potential underestimation of own funds requirements. The rules on the procedures for sharing assessments should contain appropriate provisions on the timing of the sharing of the assessments with the relevant competent authorities and EBA.

(3) Competent authorities responsible for the supervision of institutions belonging to a group subject to consolidated supervision have a legitimate interest in the quality of internal approaches used by those institutions, as they contribute to the joint decision of the approval of the internal approaches in the first place, by virtue of Article 20 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(2)]. Rules on the procedures for sharing assessments made in accordance with Article 78(3) of Directive 2013/36/EU should also specify how the general cooperation and information-sharing obligations within colleges apply in the particular context of the benchmarking exercise.

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(4) In order to ensure that the assessments made in accordance with Article 78(3) of Directive 2013/36/EU are shared in an efficient and practicable manner, competent authorities should make known their estimate or views on the level of potential underestimation of own fund requirements stemming from the internal approaches used by the institutions and the reasoning behind the conclusions of the competent authorities' assessment. In addition, actual or envisaged corrective actions by competent authorities in accordance with Article 78(4) of that Directive are also relevant for all other competent authorities responsible for the supervision of institutions belonging to a group subject to consolidated supervision as they have a legitimate interest in the continuous quality of an internal approach used by those institutions. Furthermore, actual or envisaged corrective actions by competent authorities should also be made known to EBA in accordance with Article 107(1) of that Directive, as they are necessary for EBA to carry out its tasks.

(5) The EBA report produced to assist competent authorities in their assessment of the quality of the internal approaches is a cornerstone of the benchmarking exercise, given that such report contains the results of the comparison of relevant institutions with their peers at the Union level. Therefore, the information contained in the EBA report should constitute the basis on which competent authorities decide which firms and portfolios should be assessed with 'particular attention' as required by the first subparagraph of Article 78(3) of Directive 2013/36/EU.

(6) The results of the assessment of the quality of internal approaches depend on the quality of the data reported by relevant institutions under Commission Implementing Regulation (EU) 2016/2070[(3)], which also need to be consistent and comparable. Therefore, competent authorities should be required to confirm the correct application of that Implementing Regulation by institutions, especially with regard to the application of the option available to institutions to refrain from reporting of certain individual portfolios.

(7) Where competent authorities compute benchmarks based on the standardised approach, an adjustment should be made to the own fund requirements for credit risk that result from the application of the standardised approach, for reasons of prudence. This adjustment should be established at the level applied for the computation of the transitional Basel I floor based on Article 500 of Regulation (EU) No 575/2013.

(8) Benchmarks based on the standardised approach are not currently considered appropriate to be computed in the case of market risk, as they can lead to distortions. Due to major methodological differences in the computation of own funds requirements according to the standardised and internal approaches, mainly due to sharp differences in aggregation or diversification of individual positions, a comparison between the two metrics under market risk for small portfolios would not provide a meaningful indication of potential underestimation of own funds requirements. Where standardised approach computations are considered in the assessment of credit risk models, their use should be only intended as benchmarks for assessment, rather than as floors.

(9) When assessing the overall quality of institutions' internal approaches and the degree of variability observed in particular approaches, competent authorities should not focus

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solely on the outcomes but should aim at determining the key variability drivers and at extracting conclusions in the different modelling approaches. Competent authorities should therefore be required to take into account the results of the alternative value-at-risk (VaR) and stressed value-at-risk (sVaR) calculations based on the profit-and-loss time-series.

(10) Given that the role of the competent authorities in investigating and confirming the quality of internal approaches is fundamental, in addition to the information reported by institutions in accordance with Implementing Regulation (EU) 2016/2070, competent authorities should use the powers they have under Regulation (EU) No 575/2013 for approving and reviewing internal approaches, in a proactive manner, by seeking any further information that will be useful for their on-going assessment of the quality of internal approaches.

(11) For the assessment of market risk, back-testing, based both on hypothetical and actual changes in a portfolio's value, is already required to be conducted on a daily basis for the end-of-day positions of the whole portfolio, as set out in Article 366(3) of Regulation (EU) No 575/2013. The number of over-shootings has to be communicated to competent authorities and is regularly used to assess model performance and to determine add-on factors to the regulatory VaR and sVaR multipliers. Accordingly, no additional back-testing should be applied or assessed for the portfolios relating to market risk internal approaches.

(12) The fact that the outcome of the benchmarking exercise for an individual portfolio is an extreme value or is identified in the EBA report as to be reviewed by competent authorities should not necessarily imply that the model used by the institution is incorrect or wrong. In this regard the assessments conducted by competent authorities should be used as a tool to get a more in-depth knowledge of institutions' models and modelling assumptions. In addition, the analysis of the potential differences between the own funds requirements for credit risk as reported by the institutions under Implementing Regulation (EU) 2016/2070, and the own funds requirements for credit risk that result from the use of historically observed risk parameters ('outturns') should be used by competent authorities as a proxy indicator of significant and systematic underestimation of own funds requirements, but should never substitute proper validation of the internal approach.

(13) In using the benchmarking results, competent authorities should consider possible data limitations and reflect this in their assessment as deemed appropriate. Additional metrics based on outturns should be calculated by EBA based on the information collected and will further contribute to the analysis. Similarly, given that own funds requirements produced by market risk models are portfolio-dependent and any conclusions obtained at disaggregated levels cannot be uncritically extrapolated to real portfolios held by institutions, any preliminary conclusions based solely on the total levels of capital derived from the aggregated portfolios should be considered with due caution. When assessing the results obtained, competent authorities should consider that even the aggregated portfolios comprising the largest number of instruments will still be very different from a real portfolio in terms of size and structure. In addition, since most

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institutions will not be able to model all non-aggregated portfolios, the results might not be comparable in all cases. Furthermore, it should be borne in mind that the data will not be reflecting all actions on own funds, such as constraints on diversification benefits or own funds add-ons introduced to address known modelling flaws or missing risk factors.

(14) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(15) The European Banking Authority 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 of the European Parliament and of the Council[(4)],

HAS ADOPTED THIS REGULATION:

Article 1

Procedures for sharing assessments

1 Competent authorities carrying out annual assessments of the quality of the internal approaches of institutions in accordance with Article 78(3) of Directive 2013/36/EU shall share those assessments with all other relevant competent authorities and the European Banking Authority (EBA) within three months after the circulation of the report produced by EBA referred to in the second subparagraph of Article 78(3) of that Directive.

2 Upon receipt of the assessments referred to in paragraph 1, EBA shall share them with the relevant competent authorities responsible for the supervision of institutions belonging to a group subject to consolidated supervision where the competent authorities that prepared those assessments have not already done so.

Article 2

Procedures for sharing information with other competent authorities and EBA

When sharing assessments made in accordance with Article 78(3) of Directive 2013/36/EU, competent authorities shall provide the following information:

(a) the conclusions and rationale of their assessment, based on the application of the assessment standards referred to in Articles 3 to 11;

(b) their views on the level of potential underestimation of own fund requirements stemming from the internal approaches used by institutions.

Article 3

Overview

1 When carrying out the assessment referred to in the first subparagraph of Article 78(3) or Directive 2013/36/EU, competent authorities shall identify the internal approaches that need

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specific assessment in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business model as well as the relevance of the portfolios included in Implementing Regulation (EU) 2016/2070 for the institution in relation to the risk profile of the institution. They shall also take into account the analysis provided in the EBA report referred to in the second subparagraph of Article 78(3) of Directive 2013/36/EU as follows:

a they shall treat values resulting from modelling which are considered as extreme in the EBA report as an indication of significant differences in own funds requirements in accordance with the first subparagraph of Article 78(3) of Directive 2013/36/EU;

b they shall treat values resulting from modelling and the standard deviation of those values for exposures in the same benchmark portfolio or similar benchmarking portfolios identified in the EBA report as a preliminary indication of significant differences and low or high diversity, as applicable, in own funds requirements in accordance with the first subparagraph of Article 78(3) of Directive 2013/36/EU;

c they shall treat potential differences computed in accordance with Article 4 of this Regulation as a preliminary indication of significant and systematic underestimation of own funds requirements in accordance with the first subparagraph of Article 78(3) of Directive 2013/36/EU;

d they shall treat potential differences between estimated risk parameters reported by the institutions under Implementing Regulation (EU) 2016/2070 and the historically observed risk parameters ('outturns') reported by the institutions in accordance with that Implementing Regulation as a preliminary indication of significant differences in own funds requirements in accordance with the first subparagraph of Article 78(3) of Directive 2013/36/EU;

e they shall treat potential differences between the own funds requirements for credit risk as reported by the institutions under Implementing Regulation (EU) 2016/2070 and the own funds requirements for credit risk that result from the use of outturns by the institutions in accordance with that Implementing Regulation or computed by EBA in its report referred to in the second subparagraph of Article 78(3) of Directive 2013/36/EU as a preliminary indication of significant and systematic underestimation of own funds requirements in accordance with the first subparagraph of Article 78(3) of that Directive. When using the report provided by EBA, competent authorities may take into account possible data limitations and reflect this in their assessment as deemed appropriate.

2 When carrying out the assessment referred to in paragraph 1 of this Article, competent authorities shall apply the assessment standards referred to in Articles 6 to 11.

Article 4

Computation of potential differences for credit risk using the Standardised Approach

1 Competent authorities shall compute the potential differences referred to in point (c) of Article 3(1) by subtracting the own funds requirements for credit risk as reported by the institutions under Implementing Regulation (EU) 2016/2070 from the own funds requirements for credit risk that result from the application of the standardised approach. In addition, they shall calculate the benchmark statistics regarding those differences as follows:

a for low-default portfolios (LDPs), at the portfolio level excluding the exposures to Member States' central government and central banks denominated and funded in the domestic currency as referred to in Article 114(4) of Regulation (EU) No 575/2013;

b for high-default portfolios (HDPs), at the portfolio level.