Commission Delegated Regulation (EU) 2016/1434 of 14 December 2015 correcting Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements

COMMISSION DELEGATED REGULATION (EU) 2016/1434

of 14 December 2015

correcting Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements

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 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 103(7) and (8) thereof,

Whereas:

(1) Some errors appear in all language versions of the text of Articles 5(1)(f), 5(3), 6(9), 12(1), 14(1), 20(1) and 20(5) of Commission Delegated Regulation (EU) 2015/63[(2)].

(2) Article 5(1)(f) of Delegated Regulation (EU) 2015/63 erroneously contains the word ‘original’ reducing thereby the scope of the exclusion relating to the liabilities of promotional banks. The policy objective would be clarified by the deletion of the word ‘original’.

(3) In Article 5(3) of Delegated Regulation (EU) 2015/63 the reference to Article 429(6) and (7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)] should be updated to take into consideration the amendments introduced by Commission Delegated Regulation (EU) 2015/62[(4)]. The reference should be replaced with a reference to Articles 429, 429a and 429b of Regulation (EU) No 575/2013.

(4) In Article 14(1) of Delegated Regulation (EU) 2015/63, it should be clarified that it refers to the latest approved annual financial statements available, at the latest, on 31 December of the year preceding the contribution period, and not before 31 December.

(5) Article 20(1) contains a typographical error. The deadline should be aligned with the deadline in paragraph 4 of that Article and changed to 1 September 2015.

(6) Article 20(5) needs to be aligned with Article 8(5) of Council Implementing Regulation (EU) 2015/81[(5)] in order to ensure consistency within the internal market and in Union

Changes to legislation: *Commission Delegated Regulation (EU) 2016/1434 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

law. The policy objective was reflected in the Implementing Regulation (EU) 2015/81 but erroneously not in Article 20(5) of Delegated Regulation (EU) 2015/63.

(7) Further errors appear in the German version of the text of Articles 14(1), 15(2) and 16(1) of Delegated Regulation (EU) 2015/63.

(8) Delegated Regulation (EU) 2015/63 should therefore be corrected accordingly.

(9) The errors in Delegated Regulation (EU) 2015/63 require a correction to ensure a level playing field in the internal market. For this reason, this Correcting Regulation should apply retroactively as of 1 January 2015,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/63 is corrected as follows:

(1) in Article 5(1), point (f) is replaced by the following:

(f) in the case of institutions operating promotional loans, the liabilities of the intermediary institution towards the originating or another promotional bank or another intermediary institution and the liabilities of the promotional bank towards its funding parties in so far as the amount of those liabilities is matched by the promotional loans of that institution.;

(2) in Article 5(3), the first subparagraph is replaced by the following:

For the purpose of this Section, the yearly average amount, calculated on a quarterly basis, of liabilities referred to in paragraph 1 arising from derivative contracts shall be valued in accordance with Articles 429, 429a and 429b of Regulation (EU) No 575/2013.;

(3) in Article 6, paragraph 9 is replaced by the following:

9. For the purposes of paragraphs 6, 7 and 8, the determination of the resolution authority shall be based on the assessments conducted by competent authorities where available.;

(4) in Article 12, paragraph 1 is replaced by the following:

1. Where an institution is a newly supervised institution for only part of a contribution period, the partial contribution shall be determined by applying the methodology set out in this Section to the amount of its annual contribution calculated during the subsequent contribution period by reference to the number of full months of the contribution period for which the institution is supervised.;

(5) in Article 14, paragraph 1 is replaced by the following:

1. Institutions shall provide the resolution authority with the latest approved annual financial statements which were available, at the latest, on the 31 December of the year preceding the contribution period, together with the opinion submitted by the statutory auditor or audit firm, in accordance with Article 32 of Directive 2013/34/EU of the European Parliament and of the Council[(6)].;

(6) *[Concerns only the German language version.]*

(7) *[Concerns only the German language version.]*