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)

COMMISSION DELEGATED REGULATION (EU) 2016/467

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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[(1)], 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[(2)], 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/467. (See end of Document for details)*

(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.

(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[(3)] 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[(4)].

(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[(5)] 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[(6)] also imposes similar

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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[7] 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[8] 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 Directive 2009/138/EC are deemed equivalent, as stated in Article 8 of Commission Delegated Regulation (EU) No 342/2014[9]. 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.;