# Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 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) 2015/63

## of 21 October 2014

## 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) Directive 2014/59/EU requires Member States to establish resolution financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers. Those resolution financing arrangements should have adequate financial resources to allow for an effective functioning of the resolution framework and are therefore empowered to raise *ex-ante* contributions from the institutions authorised in their territory including Union branches (institutions).

(2) Member States are obliged to raise *ex ante* contributions to resolution financing arrangements not only from institutions, but in accordance with Article 103(1) of that Directive also from Union branches. Union branches are also covered by the empowerments of the Commission to adopt delegated acts pursuant to Article 103(7) and (8) of that Directive. However, in consideration of the fact, by virtue of Article 47 of Directive 2013/36/EU of the European Parliament and of the Council[(2)], that the prudential requirements and supervisory treatment of Union branches fall under the responsibility of Member States, many of the risk adjustment metrics set out in this Delegated Regulation are not appropriate to apply directly to the Union branches. Therefore, while Union branches do not fall within the scope of this Regulation, they may be subject to a specific regime developed by the Commission in a future Delegated Act.

(3) Pursuant to Articles 6, 15, 16, 95 and 96 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)], certain investment firms which are authorized to carry out only limited services and activities are not subject or may be exempted from certain capital and liquidity requirements. Consequently, many of the

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risk adjustment metrics that should be set out would not apply to them. Whilst Member States are subject to the obligation to raise *ex ante* contributions from these investment firms in accordance with Article 103(1) of Directive 2014/59/EU, it is appropriate to leave to Member States the power of establishing the risk adjustment in order not to disproportionately burden these firms. Those investment firms should therefore not fall within the scope of this Regulation.

(4) In accordance with Article 102(1) of Directive 2014/59/EU, Member States should ensure that, within a period starting from the entry into force of the Directive until 31 December 2024, the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory. During that period of time, contributions to the financing arrangements should be spread out in time as evenly as possible until the target level is reached, by taking into account of the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions.

(5) Article 103(1) of Directive 2014/59/EU requires that contributions be raised at least annually in order to reach the target level specified in Article 102 of that Directive. Pursuant to Article 103(2) of Directive 2014/59/EU, annual contribution should reflect an institution's size, as the contribution should be based on a fixed amount determined on the basis of that institution's liabilities (basic annual contribution); second, it reflects the risk level of the relevant activities of an institution as the basic annual contribution should be adjusted in proportion to the risk profile of that institution (additional risk adjustment). The size of an institution represents a first indicator of the risk posed by an institution. The larger an institution is, the more likely it is that, in case of distress, the resolution authority would consider it in the public interest to resolve that institution and to make use of the resolution financing arrangement to ensure an effective application of the resolution tools.

(6) To clarify how resolution authorities should adjust the contributions in proportion to the risk profile of institutions it is necessary to specify the risk pillars and indicators which should be used to determine the risk profile of institutions, the mechanism for applying the risk adjustment to the basic annual contribution, and the basic annual contribution, as the starting point for the risk adjustment. Those elements which would supplement the risk criteria provided for in Article 103(7) of Directive 2014/59/EU should be established in a way to preserve a level playing field among the Member States and a strong internal market by avoiding discrepancies between Member States' approaches to the calculation of contributions to their respective resolution financing arrangements. This allows contributions paid by institutions to the resolution financing arrangements to be comparable and predictable across types of banks, which is an important element of a level playing field in the internal market.

(7) Article 5(1) of Regulation (EU) No 806/2014 of the European Parliament and of the Council[(4)] provides that the Single Resolution Board (the Board) established by Article 42(1) of that Regulation is considered, for the application of that Regulation and of Directive 2014/59/EU, as the relevant national resolution authority where it performs tasks and exercises powers which, pursuant to that Directive are to be performed

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or exercised by the national resolution authority. Considering that Article 70(7) of Regulation (EU) No 806/2014 empowers the Board to calculate the contributions of institutions to the Single Resolution Fund which would replace the financing arrangements of the participant Member States in the Single Resolution Mechanism as of 1 January 2016 by applying this Regulation based on Article 103(7) of Directive 2014/59/EU, the notion of resolution authority under this Regulation should also include the Board.

(8) The calculation of contributions at individual level would lead, in case of groups, to the double counting of certain liabilities when determining the basic annual contribution of the different group entities, since the liabilities related to the agreements that the entities of the same group conclude with each other would be, part of the total liabilities to be considered to determine the basic annual contribution of each entity of the group. Therefore, the determination of the basic annual contribution should be further specified in case of groups to reflect the interconnectedness of the group entities and avoid double counting intragroup exposures. In order to ensure a level playing field between entities which are part of a group and institutions which are members of the same IPS or are permanently affiliated to the same central body, the same treatment should apply to the latters.

(9) For the purpose of calculating the basic annual contribution of a group entity, the total liabilities to be considered should not include the liabilities arisen from any contract which that group entity concluded with any other entity which is part of the same group. However, such exclusion should only be possible where each group entity is established in the Union, is included in the same consolidation on a full basis, is subject to an appropriate centralized risk evaluation, measurement and control procedures, and if there are no current or foreseen material practical or legal impediments to the prompt repayment of the relevant liabilities when due. This should prevent liabilities from being excluded from the basis of calculation of the contributions if there are no guarantees that intragroup lending exposures would be covered where the financial health of the group deteriorates. Moreover, to avoid that the exclusion of intragroup liabilities grants an advantage to group entities which benefit from this exemption, such exclusion should not allow the institutions concerned to benefit from the simplified contribution system granted to small institutions, where, following the exclusion of intragroup liabilities, an institution would qualify for the simplified system. In order to ensure a level playing field between entities which are part of a group and institutions which are members of the same IPS or are permanently affiliated to the same central body, the same treatment should apply to the latters.

(10) By way of derogation from the rule that the calculation of contributions should be performed at individual level, in the case of a central body with credit institutions affiliated to it that are wholly or partially exempted from prudential requirements in national law in accordance with Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council, the rules on *ex ante* contributions should only apply to the central body and the affiliated credit institutions as a whole on a consolidated basis because the solvency and liquidity of the central body and of all the

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affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions.

(11) The determination of the basic annual contribution should also be further specified in case of financial market infrastructures (FMIs). Some FMIs such as central counterparties (CCPs) or central securities depositories (CSDs) are also authorized as credit institutions. Notably some CSDs provide banking-type services which are ancillary to their activity as market infrastructures. Contrary to credit institutions, CSDs do not hold covered deposits but mostly intraday or overnight balances resulting from the settlement of the securities transactions they provide to financial institutions or central banks. Generally these do not result in cash balances which could be assimilated to funding raised in order to perform banking activities. As the banking-type services performed by FMIs are ancillary to their main activities of clearing or settlement for which those entities are subject to strict prudential requirements under Regulations (EU) No 648/2012[(5)] and (EU) No 909/2014[(6)] of the European Parliament and of the Council, as well as the relevant provisions under Regulation (EU) No 575/2013 and Directive 2013/36/EU, and as the business model of the FMIs does not entail risks comparable to those of a credit institution, only the liabilities related to the banking-type activities of those entities should be taken into account when determining the amount of their total liabilities for the purpose of calculating their basic annual contribution.

(12) Accounting of derivatives is not harmonized in the Union with respect to individual accounts and therefore this could have an implication in the amount of liabilities to be considered for the calculation of the contributions of each bank. The leverage ratio methodology referred to in Article 429(6) and (7) of Regulation (EU) No 575/2013 applies to all banks and ensures that the same derivative contract, and in particular the netting between derivative contracts, will be considered in the same manner irrespective of the accounting framework to which that bank is subject. Therefore, to ensure a harmonised treatment of derivatives in the determination of the basic annual contribution allowing for the comparability of their valuation between institutions and for a level playing field across the Union, derivatives should be valued in accordance with Article 429(6) and (7) of Regulation (EU) No 575/2013. However, to ensure the predictability of the valuation of derivatives under Regulation (EU) No 575/2013, it should be foreseen that such valuation may not lead to a value which is less than 75 % of the value of the derivatives concerned under the relevant accounting framework.

(13) Some credit institutions are promotional banks whose purpose is to advance the public policy objectives of a Member State's central or regional government, or local authority predominantly through the provision of promotional loans on a non-competitive, not for profit basis. The loans that such institutions grant are directly or indirectly partially guaranteed by the central or regional government or the local authority. Promotional loans are granted on a non-competitive, not for profit basis in order to promote public policy objectives of the Union or a Member State's central or regional government. The promotional loans are sometimes extended via another institution as intermediary (pass through loans). In such cases, the intermediary credit institution receives promotional loans from a multilateral development bank or a public sector entity and extends them to other credit institutions which would provide them to the final clients. As the

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intermediary credit institutions pass through liquidity of these loans from the originating promotional bank towards a lending institution or another intermediary institution, such liabilities should not be included in the total liabilities to be considered for the purpose of calculating the basic annual contribution.

(14) Article 103(1) of Directive 2014/59/EU requires all institutions to contribute to the resolution financing arrangements. However, a proportionate and fair balance needs to be found between the obligation of any institution to contribute to a resolution financing arrangement, and its size, risk profile, the scope and complexity of its activities, its interconnectedness to the other institutions or to the financial system in general, the impact of its failure on the financial markets, on other institutions, on funding conditions, or on the wider economy, and therefore the probability that an institution enters into resolution and makes use of the financing arrangement. Such elements are taken into account by the resolution authorities, pursuant to Article 4 of Directive 2014/59/EU, when deciding whether certain institutions should benefit from simplified obligations as regards the requirements to prepare recovery and resolution plans. Also, the administrative burden deriving for certain institutions and resolution authorities from the calculation of the annual contributions should be taken into account when assessing the right balance between complying with the requirements set out in Directive 2014/59/EU and the specificities of the various institutions subject to that Directive.

(15) Small institutions do not generally have a high risk profile, are often less systemically risky compared to large institutions, and, in many cases, the impact of their failure on the wider economy is lower than that of large institutions. At the same time, the potential impact of the failure of small institutions on the financial stability cannot be ruled out as even small institutions can create systemic risk because of their role in the wider banking system, the cumulative effects of their networks, or the contagion effect that they might create through the loss of confidence in the banking system.

(16) Considering that in most cases small institutions do not pose systemic risk and are less likely to be placed under resolution, which consequently decreases the likelihood that they benefit from the resolution financing arrangements, compared to large institutions, the methodology for calculating their annual contributions to the resolution financing arrangements should be simplified. The annual contributions of small institutions should consist of a lump-sum based only on their basic annual contribution, proportioned to their size. Such a methodology should allow for a proportionate system of annual contributions as, in determining the annual contribution of each institution, the resolution authority has to comply with an annual target level of the financing arrangement. Therefore, a lump-sum reflects the fact that, in many cases, small institutions are less risky and allows for a wider adjustment of the contribution of larger institutions, which are generally more systemic, in proportion to their risk profile.

(17) To determine which institutions are considered small, a double threshold should be used whereby the first threshold based on total liabilities (excluding own funds) less covered deposits should be equal or less to EUR 300 million, and the second threshold based on the total assets should not exceed EUR 1 billion. The latter should prevent