Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 1152/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 1152 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 1152/2014

of 4 June 2014

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates

(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[(1)], and in particular the third subparagraph of Article 140(7) thereof,

Whereas:

(1) The calculation of the institution-specific countercyclical capital buffer rates requires that the location of the own funds requirements for all credit exposures of a specific institution, including exposures held in the trading book and all securitisation exposures, are identified geographically.

(2) The geographical location should be determined in the basis of the location of the risk of the exposures. That will ensure that the build-up of additional reserves from implementing the countercyclical buffer is allocated to the financial system with excess credit growth.

(3) The place of residence of the obligor or of the debtor should be generally used for determining the geographical location of all credit exposures as this is considered to best reflect the location where the risk is situated and which is, therefore, of importance to the financial system. However, the geographical location of credit exposures identified as specialised lending exposures pursuant to Article 147(8) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(2)] should be based on the location of the assets generating the income that is the primary source of repayment of the obligation.

(4) For a clear and unambiguous understanding of the measures for the identification of the geographical location of the relevant credit exposures, it is essential to specify a list of definitions of the technical terms used in this Regulation.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 1152/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 1152 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

(5) Exposures to a legal person should, in principle, be allocated to the Member State or to the third country, in which that person has its registered office. However, the place of actual centre of administration and the place of registered office of a legal person might differ. This has been recognised by the Court in its rulings in cases C-81/87 (Daily Mail), C-212/97 (Centros), C-208/00 (Überseering), C-167/01 (Inspire Art), C-411/03 (Sevic) and C-210/06 (Cartesio). To ensure proper allocation of the countercyclical capital buffer in those cases, institutions, who are aware that such a discrepancy exists with regard to an obligor, should allocate the relevant exposures to the place of the actual centre of the administration of the relevant legal person.

(6) For exposures to collective investment undertakings (CIU), it is appropriate that they are allocated in the location of the obligor of the underlying exposure as defined in this Regulation. Where the definition of the obligor of the underlying exposure is unreasonably burdensome, the exposure to the CIU may be allocated to the home Member State of the institution.

(7) Exposures to other assets should be allocated to the home Member State of the institution, if their obligor cannot be identified.

(8) Proportionality and materiality considerations should be taken into account for institutions with limited foreign overall exposure or limited trading book activity, by allowing the use of simpler allocation methods for these institutions. This is intended to alleviate the burden for smaller institutions which tend to have limited foreign and trading book activity.

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

(10) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, it has 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[3],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'general credit exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(a) of Directive 2013/36/EU;

(2) 'trading book exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(b) of Directive 2013/36/EU;

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(3) 'securitisation exposure' means the risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of an exposure referred to in Article 140(4)(c) of Directive 2013/36/EU;

(4) 'location of the obligor' means the Member State or the third country, where the natural or legal person, who is the institution's counterparty to a general credit exposure or the issuer of a financial instrument not included in the trading book or the counterparty to a non-trading book exposure, is ordinarily resident (in the case of a natural person), or has its registered office (in the case of a legal person); for a legal person whose centre of actual administration is in a Member State or in a third country other than the Member State or the country of its registered office, 'location of the obligor' means the Member State or the third country of its actual place of administration;

(5) 'location of the debtor' means the Member State or the third country, where the natural or legal person who is the issuer of the financial instrument in the trading book, or the counterparty to a trading book exposure, is ordinarily resident (in the case of a natural person), or has its registered office (in the case of a legal person); for a legal person whose centre of actual administration is in a Member State or in a third country other than the state or the country of its registered office, 'location of the debtor' means the Member State or the third country of its actual place of administration;

(6) 'location of the income' means the Member State or the third country of the location of the assets which generate the income that is the primary source of repayment of the obligation in relation to a specialised lending exposure;

(7) 'foreign exposure' means a general credit exposure whose obligor is not located in the institution's home Member State;

(8) 'specialised lending exposure' means the general credit exposures possessing the characteristics referred to in Article 147(8) of Regulation (EU) No 575/2013.

Article 2

Location of general credit exposures

1 All general credit exposures, which do not fall under paragraphs 2 to 5 of this Article, shall be allocated to the location of the obligor.

2 General credit exposures to CIUs as referred to in point (o) of Article 112 of Regulation (EU) No 575/2013, shall be allocated to the location of the obligor of the underlying exposures. If there is more than one location corresponding to the obligors of the underlying exposures of a given CIU exposure, Article 4(2) of this Regulation may also apply to that CIU exposure.

3 Specialised lending exposures as referred to in Article 147(8) of Regulation (EU) No 575/2013 shall be allocated to the location of the income.

4 General credit exposures to other items as referred to in point (q) of Article 112 of Regulation (EU) No 575/2013 shall be allocated to the institution's home Member State if the institution cannot identify their obligor.

5 The following general credit exposures may be allocated to an institution's home Member State:

a exposures to CIUs as referred to in point (o) of Article 112 of Regulation (EU) No 575/2013, where the institution cannot identify the location of the obligor or obligors