Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 342/2014. 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. 342 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 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 342/2014

of 21 January 2014

supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[(1)] and in particular Article 49(6) thereof,

Having regard to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council[(2)] and in particular to Article 21a(3) thereof,

Whereas:

(1) For financial conglomerates which include significant banking or investment business and insurance business, multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate that is to say, multiple gearing as well as any inappropriate intra-group creation of own funds should be eliminated in order to accurately reflect the availability of conglomerates' own funds to absorb losses and to ensure supplementary capital adequacy at the level of the financial conglomerate.

(2) It is important to ensure that own funds in excess of sectoral solvency requirements are only included at conglomerate level if there are no impediments to the transfer of assets or repayment of liabilities across different conglomerate entities, including across sectors.

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(3) A financial conglomerate should only include own funds that exceed sectoral solvency requirements in the calculation of its own funds if those funds are transferable across entities within the financial conglomerate.

(4) Appropriate rules should take into account that sector-specific own funds requirements are designed to cover risks relating to that sector, and are not intended to cover risks outside that sector.

(5) To ensure consistent application of the supplementary capital adequacy calculation the sectoral requirements which comprise solvency requirements for this purpose should be listed. Those requirements should be without prejudice to the sectoral provisions concerning the measures to be taken following a breach of sectoral solvency requirements. In particular, where a deficit arises at the level of a financial conglomerate due to a breach in the combined buffer requirement under Chapter 4 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council[(3)], the necessary measures required should be based on those set out in that Chapter.

(6) When calculating the supplementary capital adequacy requirement of a financial conglomerate, both a notional solvency requirement and a notional level of own funds should be calculated for non-regulated financial entities within the financial conglomerate.

(7) Part II of Annex I to Directive 2002/87/EC sets out three technical methods for calculating capital adequacy requirements at the level of the financial conglomerate: 'Accounting consolidation method' (method 1), 'Deduction and aggregation method' (method 2) and 'Combination method' (method 3), allowing the combination of method 1 and method 2. The technical calculation methods 1 and 2 should be specified to ensure their consistent application. In addition, the circumstances for the use of method 3 should be specified and it should be ensured that the competent authorities permit the use of that method in similar circumstances, apply common criteria and require that method to be applied in a way which is consistent across financial conglomerates. The competent authorities should only allow the application of method 3 where a financial conglomerate can demonstrate that the application of method 1 or 2 alone would not be reasonably feasible. The use of method 3 should be consistent over time to ensure equivalent conditions. As the technical calculation methods are carried out in accordance with the technical principles referred to in Part I of Annex I to Directive 2002/87/EC, it is necessary to specify those principles as well.

(8) Method 1 for calculating group solvency, as set out in Directive 2009/138/EC of the European Parliament and of the Council[(4)] and method 1 for calculating supplementary capital adequacy requirements, as set out in Directive 2002/87/EC should be considered equivalent since both methods are consistent with the main objectives of supplementary supervision. Both methods ensure the elimination of intra-group creation of own funds and the calculation of own funds in accordance with the definitions and limits established in the relevant sectoral rules.

(9) The empowerment to adopt regulatory technical standards in Article 49(6) of Regulation (EU) No 575/2013 is closely linked with the empowerment in Article 21a(3)

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of Directive 2002/87/EC, since both deal with consistent application of the methods of calculation laid down in the Annex to that Directive. To ensure coherence in the methods of calculation specified for the purpose of those legislative acts and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to lay down the regulatory technical standards adopted pursuant to those empowerments in a single Regulation.

(10) This Regulation should be based on the new sectoral solvency regimes that have been established in the Union in order to ensure the most consistent application of the calculation methods. This Regulation should therefore not apply before the date of application of Regulation (EU) No 575/2013. The rules dependent on the application of Directive 2009/138/EC should begin to apply from the date of application of that Directive. Existing national implementation of the calculation of supplementary capital adequacy requirements should therefore continue to be used in those areas that have not been harmonised by this Regulation in the period before it applies in full, and underlying calculations that are based on insurance sectoral rules should be based on the insurance sectoral rules that apply at the time of that calculation.

(11) This Regulation is based on the draft regulatory technical standards submitted jointly by the European Supervisory Authority (European Banking Authority) (EBA), European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) and European Supervisory Authority (European Securities and Markets Authority) (ESMA) to the Commission.

(12) The EBA, EIOPA and ESMA have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, in accordance with Article 10 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(5)], Article 10 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(6)] and Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(7)], and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010, Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 and Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation specifies the technical principles and technical calculation methods listed in Annex I to Directive 2002/87/EC for the purposes of the alternatives to

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deduction referred to Article 49(1) of Regulation (EU) No 575/2013 and for the purposes of calculating own funds and supplementary capital adequacy requirement as provided for in Article 6(2) of Directive 2002/87/EC.

Article 2

Definitions

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

(1) 'insurance-led financial conglomerate' means a financial conglomerate the most important financial sector of which is insurance, in accordance with Article 3(2) of Directive 2002/87/EC;

(2) 'banking-led or investment-led financial conglomerate' means a financial conglomerate the most important financial sector of which is either the banking sector or the investment services sector, in accordance with Article 3(2) of Directive 2002/87/EC.

CHAPTER II

TECHNICAL PRINCIPLES

Article 3

Elimination of multiple gearing and the intra-group creation of own funds

Own funds which result directly or indirectly from intra-group transactions shall not be included when calculating the supplementary capital adequacy requirements at the level of a financial conglomerate.

Article 4

Transferability and availability of own funds

1 Own funds recognised at the level of a regulated entity, that exceed those needed to meet sectoral solvency requirements as specified in Article 9, shall not be included in the calculation of the own funds of a financial conglomerate, or of the sum of the own funds of each regulated and non-regulated financial sector entity in a financial conglomerate, unless there is no current or foreseen practical or legal impediment to the transfer of the funds between entities in the financial conglomerate.

2 The entity referred to in the fifth subparagraph of Article 6(2) of Directive 2002/87/EC shall, when submitting the results of the calculation and the relevant data for the calculation referred to in that subparagraph to the coordinator, confirm and provide evidence to the coordinator that paragraph 1 is complied with.

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Article 5

Sector specific own funds

1 Own funds referred to in paragraph 2 which are available at the level of a regulated entity shall be eligible for the coverage of risks arising from the sector that recognises those own funds, and shall not be taken into account as eligible for the coverage of risks of other financial sectors.

2 The own funds referred to in paragraph 1 are own funds that are not the following:

a Common Equity Tier 1, Additional Tier 1 or Tier 2 items within the meaning of Regulation (EU) No 575/2013;

b basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 or in Tier 2 in accordance with Article 94(1) and (2) of that Directive.

Article 6

Deficit of own funds at the financial conglomerate level

1 Where there is a deficit of own funds at the financial conglomerate level, only own fund items that are eligible under the sectoral rules for both the banking sector and the insurance sector shall be used to meet that deficit.

2 The own funds referred to in paragraph 1 are the following:

a Common Equity Tier 1 capital as defined in Article 50 of Regulation (EU) No 575/2013;

b basic own-fund items where those items are classified in Tier 1 in accordance with Article 94(1) of Directive 2009/138/EC and the inclusion of those items is not limited by the delegated acts adopted in accordance with Article 99 of that Directive;

c Additional Tier 1 capital as defined in Article 61 of Regulation (EU) No 575/2013;

d basic own-fund items where those items are classified in Tier 1 in accordance with Article 94(1) of Directive 2009/138/EC and the inclusion of those items is limited by the delegated acts adopted in accordance with Article 99 of that Directive;

e Tier 2 capital as defined in Article 71 of Regulation (EU) No 575/2013; and

f basic own-fund items where those items are classified in Tier 2 in accordance with Article 94(2) of Directive 2009/138/EC.

3 Own funds items that are used to meet the deficit shall comply with Article 4(1).

Article 7

Consistency

The regulated entities or the mixed financial holding company in a financial conglomerate shall apply the calculation method in a consistent manner over time.