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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 4.6.2014 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

Delegations will find attached document C(2014) 3658 final.

Encl.: C(2014) 3658 final



Brussels, 4.6.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 4.6.2014

**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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 140(7) of Directive 2013/36/EU ('the Directive') of the European Parliament and of the Council empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), **and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010**, delegated acts specifying the identification of the geographical location of the relevant credit exposures for the purposes of the countercyclical capital buffer rate under **Article 140**.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 140(7) of Directive 2013/36/EU ('the Directive') of the European Parliament and of the Council. A consultation paper was published on the EBA internet site on 2 September 2013, and the consultation closed on 1 November 2013. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/credit-risk/draft-regulatory-technical-standards-rts-on-the-method-for-the-identification-of-the-geographical-location-of-the-relevant-credit-exposures-under-article-140-7-of-the-capital-requirements-directive-crd->, pages [xx-xx] of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 130(1) of the Directive establishes that institutions shall maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the institution specific countercyclical capital buffer rate. The institution-specific countercyclical

capital buffer rate shall consist of the weighted average of the countercyclical capital buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or applied (Article 140(1) of the Directive). This requires allocating the relevant credit exposures to the different jurisdictions. Hence, this delegated act specifies the method for the identification of the geographical location of the relevant credit exposures.

This delegated act specifies that the main principle to identify the geographical location of relevant credit exposures is the obligor principle, i.e. the residence of the obligor (or debtor), as this choice is considered to best reflect the location of the risk of the exposures. It is then specified in more detail how the geographical location of credit exposures, trading book exposures and securitisation exposures shall be determined.

Institutions shall determine the geographical location of credit exposures as the place of the obligor. However, some exceptions are included, for specialised lending, for CIU exposures and for non-credit-obligation assets.

Trading book exposures shall be deemed to be located in the place of the debtor. The geographical location of trading book exposures subject to the own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013, shall be determined by multiplying the total risk-weighted exposure amount for these exposures by the ratio of the own fund requirements for each country divided by the own fund requirements of the sum of the countries.

Securitisation exposures shall be deemed to be located in the place of the obligor(s). However, the institutions are given some flexibility: in case there is more than one obligor, the exposures may be deemed to be located at the place of the obligor of the underlying exposures with the highest proportion in the underlying securitisation exposures. Furthermore, if no information of the underlying securitisation exposures is available, or identifying the underlying obligor would imply a disproportionate effort, these exposures may be allocated to the place of the institution.

Furthermore, this draft regulatory technical standard contains proportionality and materiality considerations to alleviate the burden for smaller institutions which tend to have limited foreign and trading activity.

COMMISSION DELEGATED REGULATION (EU) No .../..

of 4.6.2014

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 firms¹, 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 Council² should

¹ 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 du 27.6.2013, p. 338).

² 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 (OJ L 176, 27.6.2013, p. 1).

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.
- (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 recognized 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 Council³,

³ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

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) 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) 575/2013 of an exposure referred to in Article 140(4)(b) of Directive 2013/36/EU;
- (3) ‘securitisation exposure’ means the risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) 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) 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 of the underlying exposures based on information existing internally or available externally without disproportionate effort;
 - (b) foreign exposures, whose aggregate does not exceed 2% of the aggregate of the general credit, trading book and securitisation exposures of that institution. The aggregate of the general credit, trading book and securitisation exposures is calculated by excluding the general credit exposures located in accordance with point (a) of this paragraph and with paragraph 4.
- (6) Institutions shall calculate the percentage referred to in point (b) of paragraph 5, both on an annual and on an ad hoc basis. An ad hoc calculation is required when an event that affects the financial or economic situation of the institution occurs.

Article 3

Geographical location of trading book exposures

- (1) Subject to paragraphs 2 and 3, trading book exposures shall be allocated to the location of the debtor.
- (2) For trading book exposures subject to the own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013, institutions shall determine

their geographical location by multiplying their aggregate risk exposure amount by the ratio below :

- (a) the own funds requirements for sub-portfolios split according to the geographical location determined according to the model provided in Chapter 5 of Title IV of Part Three of Regulation (EU) No 575/2013 to
 - (b) the sum of own funds requirements determined under point (a) across all geographical locations.
- (3) Institutions, whose total trading book exposures does not exceed 2% of their total general credit, trading book and securitisation exposures, may allocate those exposures to the home Member State of the institution.
 - (4) Institutions shall calculate the percentage referred to in paragraph 3, both on an annual and on an ad hoc basis. An ad hoc calculation is required when an event that affects the financial or economic situation of the institution occurs.

Article 4

Geographical Location of securitisation exposures

- (1) A securitisation exposure shall be allocated to the location of the obligor of the underlying exposures.
- (2) Where there is more than one location corresponding to the obligor of the underlying exposures of a given securitisation exposure, that exposure may be allocated to the location of the obligor of the underlying exposures with the highest proportion in the underlying securitisation exposures.
- (3) Securitisation exposures for which information on underlying securitisation exposures is not available, may be allocated to the home Member State of the institution if the institution cannot identify the underlying obligor based on existing available information from internal or external sources or without applying a disproportionate effort to obtain the information.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4.6.2014

For the Commission
The President
José Manuel BARROSO