



Council of the
European Union

Brussels, 3 October 2016
(OR. en)

12836/16

EF 293
ECOFIN 867
DELECT 205

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 September 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2016) 5905 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 23.9.2016 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for data waiver permissions

Delegations will find attached document C(2016) 5905 final.

Encl.: C(2016) 5905 final



Brussels, 23.9.2016
C(2016) 5905 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 23.9.2016

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for data waiver permissions

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Articles 180(3)(a), 181(3)(b) and 182(4)(b) of Regulation (EU) No 575/2013 ('the Regulation') empower the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Article 10 of Regulation No (EU) 1093/2010 establishing the EBA, delegated acts specifying conditions according to which competent authorities may permit institutions to use relevant data covering shorter time period.

In accordance with Articles 10 to 15 of Regulation No (EU) 1093/2010 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 Articles 180(3)(a), 181(3)(b) and 182(4)(b) of the Regulation. A consultation paper was published on 7 March 2014, and the consultation closed on 7 June 2014. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on the consultation paper.

As specifically requested by the Commission, only the draft technical standards and explanatory memorandum are submitted to the Commission for the adoption of the RTS. All relevant background information - notably the background and rationale of the draft technical standards, the impact assessment and the feedback on the public consultation - is included in the full version of the EBA RTS, which was approved by the EBA's Board of Supervisors on 16 December 2014 and subsequently published on the EBA's public website: <https://www.eba.europa.eu/regulation-and-policy/model-validation/draft-regulatory-technical-standards-on-data-waiver>

3. LEGAL ELEMENTS OF THE DELEGATED ACT

All the provisions in this delegated act relate to the specification of the conditions according to which competent authorities may grant permission to institutions to use relevant data covering a period of two years rather than five years for probability of default, own-loss given default and own-conversion factor estimates for certain type of exposures, when they implement the Internal Rating Based Approach ('IRB Approach'). This waiver may encourage the migration of some institutions to the IRB Approach, which is considered more risk-sensitive than the Standardised Approach. Institutions are required to collect extended historical data after implementation of the IRB Approach.

The EBA recognises the increased uncertainty of the estimation of risk parameters that result from the use of a shorter data history. Therefore, to limit the potential implications for the

calculation of own funds requirements, this delegated act introduces limiting conditions for the use of the data waiver, namely by excluding low-default portfolios as well as restricting the application of the data waiver to a limited proportion of assets.

To further mitigate the risks associated with using shorter data series, the requirements also highlight the importance of applying an appropriate margin of conservatism to parameter estimates as well as ensuring that there is an enhanced data vetting process. Moreover, institutions should prove that relevant data covering a longer period is not available.

Furthermore, it has been concluded that after five years of IRB implementation by institutions, sufficient data history should already be available. Therefore, permission for data waiver should not be allowed after five years have elapsed from the initial permission granted to an institution.

Finally, this delegated act ensures the application of the principles of proportionality and legal clarity. Therefore, the EBA has concluded that the provisions of these RTS should apply only to new data waiver permissions to be granted by the competent authorities.

COMMISSION DELEGATED REGULATION (EU) .../...

of 23.9.2016

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for data waiver permissions

(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 648/2012¹, and in particular Articles 180(3), 181(3) and 182(4) thereof,

Whereas:

- (1) Once it starts implementing the Internal Ratings Based Approach (IRB Approach), an institution and any parent undertaking and its subsidiaries may request the competent authority's permission to use data covering a period of two rather than five years for probability of default (PD), own-loss given default (own-LGD) and own-conversion factor estimates for certain types of exposures. The conditions according to which the competent authorities may grant data waiver permissions should be set out.
- (2) Competent authorities should verify that institutions comply with the requirements laid down in Regulation (EU) No 575/2013 before they grant the data waiver permission. This Regulation however does not impose requirements for competent authorities for any specific regular review of the institutions' compliance with requirements for data waiver permission, therefore institutions ceasing to comply with the requirements of this Regulation have recourse to Article 146 of Regulation (EU) No 575/2013.
- (3) The shorter the data history, the more difficult it is to estimate risk parameters. With a view to ensuring that the data waiver permission is limited to a small subset of institution assets, a maximum quantitative threshold should be set, both at the level of the exposure value and at the level of the IRB Approach and the Standardised Approach calculated risk-weighted exposures amount for which the permission for the data waiver can be granted. For the same purpose, portfolios where composition of types of exposures firmly characterised by few or no defaults observed should be explicitly excluded from the scope of application of the permission for data waiver.

¹ OJ L 176, 27.6.2013, p. 1.

- (4) To ensure prudent calculation of own funds requirements, other considerations should also be taken into account by competent authorities when assessing requests for data waiver permissions. Specifically, institutions requesting permission for the use of shorter data series should apply an appropriate margin of conservatism. Moreover, institutions should prove to the satisfaction of the competent authorities the lack of accurate, complete or appropriate longer time series of data. Given that the impact on own funds requirements may be higher as a consequence of inaccurate data, institutions should also employ additional data quality validation procedures commensurate with the smaller sample size.
- (5) Types of exposures which are not included in the institution's portfolio at the time when the institution first implements the IRB Approach, should not be considered eligible for the granting of a data waiver permission. Conversely, data waiver permissions should be granted only for types of exposures that were included in the institution's portfolio at the time when the institution first implements the IRB Approach, irrespective of how these exposures move to the IRB Approach immediately or subsequently in accordance with the sequential roll-out plan.
- (6) The purpose of the data waiver is to provide an exemption from the obligation to use five years' historic data for the estimation of IRB parameters for types of exposures that exist in the institution's portfolio, when the institution first implements the IRB Approach. After five years from that first implementation, institutions should have collected sufficient data to no longer require use of the waiver. Therefore, data waiver permissions should not be granted after five years from the date an institution started implementing the IRB Approach.
- (7) There is a need to ensure that conditions laid down in this Regulation do not hamper the rating systems already in use by institutions, but that they instead assist with the smooth transition to the new regime, enhance legal certainty for institutions and avoid further costs to institutions. By virtue of Articles 180, 181 and 182 of Regulation (EU) No 575/2013, the data waiver permission concerns the use of two year data instead of five year data; as a result, it naturally expires three years after it is provided. Therefore, the regulatory technical standards should not affect the data waiver permissions already granted by competent authorities at the time of entry into force of this Regulation, because it would be disproportionate and would discourage use of the IRB Approach. The provisions in this Regulation are closely linked, since they all relate to the conditions under which a data waiver may be granted. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all of the regulatory technical standards required by Articles 180(3), 181(3) and 182(4) of Regulation (EU) No 575/2013 in a single Regulation.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (9) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, 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 Council²,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down the mandatory conditions under which competent authorities may grant institutions the permissions to use data covering a period of two rather than five years for probability of default ('PD'), own loss given default ('own-LGD') and own-conversion factor estimates as set out in point (h) of Article 180(1), point (e) of Article 180(2), and Articles 181(2) and 182(3) of Regulation (EU) No 575/2013 ("data waiver permissions").

Article 2
Conditions for eligibility of exposures

1. Subject to paragraphs 2 and 3, any type of exposures other than exposures to central governments, central banks and institutions as set out in points (a) and (b) of Article 147(2) of Regulation (EU) No 575/2013 shall be eligible for data waiver permissions.
2. Exposures to corporates as set out in point (c) of Article 147(2) of Regulation (EU) No 575/2013 shall be eligible for data waiver permissions where they are not structurally characterised by few or no observed defaults.
3. Types of exposures which were not included in the institution's portfolio at the time when an institution started to implement the Internal Ratings Based Approach (IRB Approach) shall not be eligible for a data waiver permission.

Article 3
Quantitative conditions

1. Competent authorities may only grant data waiver permissions where the following quantitative conditions are met in respect of an institution:
 - (a) the total exposure value of the data waiver permission requested and all its data waiver permissions which have been granted but not revoked or expired ('data waiver permissions in force') do not exceed 5% of the institution's total exposure value;
 - (b) the total risk-weighted exposure amount of the data waiver permission requested and all its data waiver permissions in force do not exceed 5% of the institution's total risk-weighted exposure amount.

² 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).

2. For the purposes of point (a) of paragraph 1, the total exposure value shall be the aggregate exposure value of all types of exposures measured for credit and dilution risk, before reduction of specific credit risk adjustments, additional value adjustments in accordance with Articles 34 and 110 of Regulation (EU) 575/2013 and of other own funds reductions.
3. For the purposes of point (b) of paragraph 1, total risk-weighted exposure amount shall be the aggregate risk exposure amount of all types of exposures, risk-weighted for credit and dilution risk in accordance with the approach applied by the institution

Article 4
Qualitative conditions

Competent authorities may only grant the data waiver permission to an institution that provides well-documented evidence that all the following conditions are met in respect of every type of exposure:

- (a) longer time series data are unavailable or unsuitable due to lack of accuracy, completeness or appropriateness;
- (b) an appropriate margin of conservatism is applied, in accordance with point (a) of Article 179(1) of Regulation (EU) No 575/2013 to adequately compensate for the expected range of estimation errors arising from the use of shorter historic data series;
- (c) the data input vetting process referred to in point (b) of Article 174 of Regulation (EU) No 575/2013 is enhanced for the shorter time series.

Article 5
Time period

Competent authorities may only grant waiver permissions for the first five years after the date when an institution was first permitted to calculate its risk-weighted exposure amounts using the IRB Approach in accordance with Article 143 of Regulation (EU) No 575/2013.

Article 6
Transitional Provision

Data waiver permissions granted by the competent authorities before the entry into force of this Regulation shall not be subject to this Regulation.

Article 7
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, 23.9.2016

For the Commission
The President
Jean-Claude JUNCKER