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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 Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.12.2015 correcting Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements

Delegations will find attached document C(2015) 8835 final.

Encl.: C(2015) 8835 final



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

of 14.12.2015

correcting Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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 ('BRRD') requires Member States to establish financing arrangements for the purpose of ensuring the effective application by resolution authorities of the resolution tools and powers.

Pursuant to Article 103 of the BRRD, to reach the target level of those arrangements, Member States shall raise contributions from the banking sector at least annually. Under Article 103(7) of the BRRD, the Commission is empowered to adopt delegated acts to specify the notion of adjusting contributions in proportion to the risk profile of institutions. Under Article 103(8) of the BRRD, the Commission is empowered to adopt delegated acts to specify the registration, accounting, reporting and other obligations necessary to ensure that the contributions are paid and the measures ensuring that contributions are paid fully and correctly.

The Commission adopted on 21 October 2014 a Commission Delegated Regulation (EU) [2015/63](#) supplementing Directive [2014/59/EU](#) of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements.

This delegated Regulation corrects some minor errors in the English language version of the text of Articles 5(1), 5(3), 6(9), 12(1), 14(1) and 20(1) of the Commission Delegated Regulation (EU) [2015/63](#). It also corrects a more substantial error in the English language version of the text of Article 20(5) of the Commission Delegated Regulation (EU) [2015/63](#) in order to address an issue of inconsistency in the law of the Union, namely with Article 8(5) of the Council Implementing Regulation (EU) [2015/81](#) of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund. Finally, this delegated Regulation corrects some minor errors in the German language version of the text of Articles 14(1), 15(2) and 16(1) of the Commission Delegated Regulation (EU) [2015/63](#).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No consultation or impact assessment is required in relation to this Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated Regulation corrects minor errors in the English language version of the text of the following Articles:

- Article 5(1)(f) contains the word "original" which has created some confusion among stakeholders and in other language versions. In fact, it has been translated with the word "originating" in several languages including the Italian, the French and the German ones reducing thereby the scope of the exclusion relating to the liabilities of promotional banks. The objective of the Commission was clearly to exclude from the calculation base the liabilities of all promotional banks in so far as the amount of those liabilities is matched by the promotional loans. Therefore, it would apply not only the liabilities of the "originating" promotional banks, but to any liabilities

corresponding to promotional loans directly or indirectly granted by the promotional bank. This is because the purpose of promotional banks 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 policy objective of the Commission would be clarified by the deletion of the word "original".

- Article 5(3) contains an outdated reference to Article 429(6) and (7) of Regulation (EU) No 575/2013 which has been amended by Commission Delegated Regulation 2015/62. The reference should be replaced with Articles 429, 429a and 429b of Regulation (EU) No 575/2013.
- Article 6(9) is missing the words "determination of the" which makes the sentence unclear.
- Article 12(1) contains a typo.
- Article 14(1) needs to clarify that it refers to the latest approved annual financial statements available, at the latest, on the 31st of December of the year preceding the contribution period, and not before the 31st of December. This is clear in paragraph 4 of Article 14 and needs to be clarified in paragraph 1.
- Article 20(1) contains a typo. The deadline of 31st of January should be aligned with the one in paragraph 4, which states that "by way of derogation from Article 16(1), the deposit guarantee schemes shall provide the resolution authority by 1 September 2015 with the information about the amount of covered deposits as of 31 July 2015.
- Article 20(5) needs to be aligned to Article 8(5) of the Council Implementing Regulation (EU) 2015/81 of 19 December 2014 in order to ensure consistency within the internal market and in the law of the Union. The policy objective, which was discussed and agreed with the experts of the Member States and of the European Parliament, was reflected in the Council Implementing Regulation (EU) 2015/81 but not in Article 20(5) of the Commission Delegated Act. This is a substantial error which requires a correction to ensure the level playing field in the Euro area and in the rest of the internal market. For this reason, this correcting delegated Regulation should apply retroactively as of 1 January 2015.

Finally, this delegated Regulation corrects some minor errors in the German language version of the text of Articles 14(1), 15(2) and 16(1) of the Commission Delegated Regulation (EU) 2015/63.

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

of 14.12.2015

correcting Delegated Regulation (EU) 2015/63 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 Council¹, and in particular Article 103(7) and (8) thereof,

Whereas:

- (1) Some errors appear in all language versions of the text of Articles 5(1)(f), 5(3), 6(9), 12(1), 14(1), 20(1) and 20(5) of Commission Delegated Regulation (EU) 2015/63².
- (2) Article 5(1)(f) of Delegated Regulation (EU) 2015/63 erroneously contains the word "original" reducing thereby the scope of the exclusion relating to the liabilities of promotional banks. The policy objective would be clarified by the deletion of the word "original".
- (3) In Article 5(3) of Delegated Regulation (EU) 2015/63 the reference to Article 429(6) and (7) of Regulation (EU) No 575/2013³ should be updated to take into consideration the amendments introduced by Commission Delegated Regulation 2015/62⁴. The reference should be replaced with a reference to Articles 429, 429a and 429b of Regulation (EU) No 575/2013.
- (4) In Article 14(1) of Delegated Regulation (EU) 2015/63, it should be clarified that it refers to the latest approved annual financial statements available, at the latest, on the

¹ OJ L173, 12.6.2014, p. 190.

² 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 (OJ L11, 17.1.2015, p. 44).

³ 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 L176, 27.6.2013, p. 1).

⁴ Commission Delegated Regulation (EU) 2015/62 of 10 October 2014 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio (OJ L11, 17.1.2015, p. 37).

31st of December of the year preceding the contribution period, and not before the 31st of December.

- (5) Article 20(1) contains a typographical error. The deadline should be aligned with the deadline in paragraph 4 of that Article and changed to 1 September 2015.
- (6) Article 20(5) needs to be aligned with Article 8(5) of Council Implementing Regulation (EU) 2015/81⁵ in order to ensure consistency within the internal market and in Union law. The policy objective was reflected in the Implementing Regulation (EU) 2015/81 but erroneously not in Article 20(5) of Delegated Regulation (EU) 2015/63.
- (7) Further errors appear in the German version of the text of Articles 14(1), 15(2) and 16(1) of Delegated Regulation (EU) 2015/63..
- (8) Delegated Regulation (EU) 2015/63 should therefore be corrected accordingly.
- (9) The errors in Delegated Regulation (EU) 2015/63 require a correction to ensure a level playing field in the internal market. For this reason, this Correcting Regulation should apply retroactively as of 1 January 2015,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/63 is corrected as follows:

- (1) In Article 5(1), point (f) is replaced by the following:

"(f) in the case of institutions operating promotional loans, the liabilities of the intermediary institution towards the originating or another promotional bank or another intermediary institution and the liabilities of the promotional bank towards its funding parties in so far as the amount of those liabilities is matched by the promotional loans of that institution."

- (2) In Article 5(3), the first subparagraph is replaced by the following:

"3. For the purpose of this Section, the yearly average amount, calculated on a quarterly basis, of liabilities referred to in paragraph 1 arising from derivative contracts shall be valued in accordance with Articles 429, 429a and 429b of Regulation (EU) No 575/2013."

- (3) In Article 6, paragraph 9 is replaced by the following:

"9. For the purposes of paragraphs 6, 7 and 8, the determination of the resolution authority shall be based on the assessments conducted by competent authorities where available."

- (4) In Article 12, paragraph 1 is replaced by the following:

⁵ Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund (OJ L 15, 22.1.2015, p. 1).

"1. Where an institution is a newly supervised institution for only part of a contribution period, the partial contribution shall be determined by applying the methodology set out in this Section to the amount of its annual contribution calculated during the subsequent contribution period by reference to the number of full months of the contribution period for which the institution is supervised."

(5) In Article 14, paragraph 1 is replaced by the following:

"1. Institutions shall provide the resolution authority with the latest approved annual financial statements which were available, at the latest, on the 31st of December of the year preceding the contribution period, together with the opinion submitted by the statutory auditor or audit firm, in accordance with Article 32 of Directive 2013/34/EU of the European Parliament and of the Council(*)."

(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(6) [Concerns only the German language version.]

(7) [Concerns only the German language version.]

(8) In Article 20(1), the third sentence is replaced by the following:

" In 2015 where any of the information required in Article 16 is not available to the deposit guarantee scheme by 1st September for the purposes of the calculation the annual target level referred to in Article 4(2) or of the basic annual contribution of each institution referred to in Article 5, following a notification by the deposit guarantee scheme, the relevant credit institutions shall provide the resolution authorities with that information by that date. "

(9) In Article 20(5), the first sentence is replaced by the following:

"5. Without prejudice to Article 10 of this Regulation, during the initial period referred to in Article 69(1) of Regulation EU (No) 806/2014, Member States may allow institutions whose total assets are equal to or less than EUR 3 000 000 000 to pay a lump-sum of EUR 50 000 for the first EUR 300 000 000 of total liabilities, less own funds and covered deposits"

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 14.12.2015

*For the Commission
The President
Jean-Claude JUNCKER*