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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, 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 11.2.2021 amending Delegated Regulation (EU) No 1222/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions

Delegations will find attached document C(2021) 772 final.

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

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amending Delegated Regulation (EU) No 1222/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 36(4) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Article 131 of Directive No 2013/36/EU, delegated acts specifying the methodology for the identification of Global Systemically Important Institutions (G-SIIs).

In accordance with Article 10(1) of Regulation (EU) No 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 (EU) No 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 131(18) of Directive No 2013/36/EU. A consultation paper was published on the EBA internet site on 05 March 2020, and the consultation closed on 05 August 2020. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them. 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 (EU) No 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 <https://eba.europa.eu/regulation-and-policy/own-funds/global-systemically-important-institutions-g-sii->.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The amending Regulatory Technical Standards amend Commission Delegated Regulation (EU) No 1222/2014 specifying the methodology for the identification of global systemically important institutions (G-SIIs). The methodology set out in that Regulation to identify global systemically relevant institutions (G-SIIs) closely follows the approach of the Basel Committee on Banking Supervision (BCBS) for identifying global systemically important banks (G-SIBs, in BCBS terminology). The list of EU G-SIBs identified by the BCBS and the G-SIIs identified by Member States' authorities have to date been identical.

The G-SII identification framework comprises for the first time an additional EU methodology to allocate G-SII buffer rates to identified G-SIIs. Relevant authorities wishing to make use of this additional EU methodology shall provide clear and observable evidence of the proposed decisions under the sound supervisory judgement principle. In order for observable data to be available across very large institutions in the EU that fall in scope of this exercise, the EBA is including in its technical standards on supervisory reporting the requirement to collect frequent and harmonised data to support the additional EU methodology. The annual G-SII exercise starts from end of April with the deadline for the

institutions to disclose systemic importance indicators to November when the relevant authorities shall notify identified G-SIIs and correspondent G-SII buffer rates.

For practical reasons, to make the update and ongoing exercises easier, the full data template with the detailed specification of the indicator values will now only be incorporated in the EBA Guidelines to be updated every year.

In order to strengthen national supervisory practices as regards such specifications of data points, the EBA is issuing Guidelines every year addressed to national competent authorities. Such Guidelines will not have the effect of amending/updating binding EU law nor of jeopardising the methodology to identify G-SIIs which is solidly embodied in the amended Regulation, since these updates are limited to technical details under the competence of the Member States.

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

of 11.2.2021

amending Delegated Regulation (EU) No 1222/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions

(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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and in particular Article 131(18) thereof,

Whereas:

- (1) In July 2018, the Basel Committee on Banking Supervision (BCBS) published a revised methodology for assessing global systemically important banks. That revised methodology introduced a new indicator to measure systemic importance, relating to the trading volume and which is included in the category that measures the substitutability of services or of the financial infrastructure provided by a banking group. The introduction of that new indicator has, however, no effect on the weight of that category, because the relative weight assigned to the new trading volume indicator is offset by a reduction, from 6,67 % to 3,33 %, in the relative weight of underwritten transactions in the debt and equity markets indicator. The category that measures the substitutability of services or of the financial infrastructure provided by a banking group thus retains its relative weight of 20 % in the overall score for each entity. The revised methodology also included insurance activities in the indicators-based measurement approach used to assess the systemic importance of banking groups. Those changes to the methodology for assessing global systemically important banks should be reflected in Commission Delegated Regulation (EU) No 1222/2014¹.
- (2) The relevant authorities should calculate the scores of the relevant entities to be included in the sample notified by the EBA not later than 1 September of each year to allow for agreement at Union level.
- (3) The data collection established in accordance with the revised methodology, which includes the trading volume indicator, will start in the first quarter of 2022. G-SIIs will

¹ Commission Delegated Regulation (EU) No 1222/2014 of 8 October 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions (OJ L 330 15.11.2014, p. 27).

therefore be identified on the basis of the revised framework for the first time in the last quarter of 2022. In order to align the application of the provisions of the revised methodology with the dates of application of the revised methodology, the provisions of this Regulation that reflect the changes in the revised methodology should apply from 1 December 2021.

- (4) Article 131 of Directive 2013/36/EU was amended by Directive (EU) 2019/878 of the European Parliament and of the Council² to introduce into Directive 2013/36/EU an additional overall score for G-SIIs with the cross-border activities' indicator excluding the cross-border activities across the Member States participating in the Single Resolution Mechanism (SRM). That additional overall score was introduced to reflect the ability to resolve cross-border groups within the European banking union in an orderly manner. It is therefore appropriate to amend the scope of the cross-border activity indicator to reflect that change.
- (5) Directive (EU) 2019/878 further enabled competent and designated authorities to use sound supervisory judgement to reallocate a global systemically important institution (G-SII) from a higher subcategory to a lower subcategory on the basis of the additional overall score that accounts for the specificities of the European banking union and the SRM within cross-border activity indicators. To mitigate the potential adverse effects of a sharp reduction in a G-SII's allocated systemic importance, however, and in line with the revised methodology, the possibility for the relevant competent and designated authorities of reallocating a G-SII from a higher subcategory to a lower subcategory should be limited to a maximum decrease of one subcategory from the original subcategory allocation resulting from the initial G-SII overall score. Moreover, in order to ensure consistency with the views of the BCBS, any supervisory judgement leading to a reallocation of a G-SII to a lower subcategory should adequately take into account its views.
- (6) Delegated Regulation (EU) No 1222/2014 should therefore be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA).
- (8) The EBA 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 advice 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,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 1222/2014

Delegated Regulation (EU) No 1222/2014 is amended as follows:

- (1) in Article 2, point (1) is replaced by the following:

² Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

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).

- (1) ‘Relevant entity’ means a group headed by an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company, or an institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company;’;
- (2) in Article 3, paragraph 2 is replaced by the following:

‘2. The relevant authority shall report the indicator values of each relevant entity with a total exposure measure, calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council*, above EUR 200 billion that is authorised within its jurisdiction to the EBA not later than 31 July of each year. The indicator values shall be collected by the relevant authority taking into account the further specifications of the underlying data as set out in any guidelines developed by the EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council**. The relevant authority shall ensure that the indicator values are identical to those submitted to the Basel Committee on Banking Supervision.

* 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).

** 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).’;

- (3) Article 4 is replaced by the following:

‘Article 4

Identification procedure

1. The relevant authority shall calculate the scores of the relevant entities that are included in the sample notified by the EBA and which are authorised in its jurisdiction not later than 1 September of each year.
2. Where the relevant authority, in the exercise of sound supervisory judgement, reallocates a G-SII from a lower subcategory to a higher subcategory or designates a relevant entity as a G-SII in accordance with points (a) or (b) of Article 131(10) of Directive 2013/36/EU, respectively, the relevant authority shall provide the EBA with a detailed statement in written form on the reasons for its assessment not later than 1 November of each year.
3. Where the relevant authority, in the exercise of sound supervisory judgement, reallocates a G-SII from a higher subcategory to a lower subcategory in accordance with point (c) of Article 131(10) of Directive 2013/36/EU, the relevant authority shall provide the EBA with a detailed statement in written form on the reasons for its assessment not later than 30 September of each year.
4. The reallocation or designation referred to in paragraph 2 shall take effect as of 1 January of the second year following the calendar year in which the denominators have been notified to the relevant authorities in accordance with Article 3(3). Where a G-SII is allocated to a lower subcategory than in the previous year’s identification process, the lower G-SII buffer requirement shall

take effect from 1 January of the year following that reallocation, unless the relevant authority exerts its sound supervisory judgement to delay the application of that requirement to the date referred to in the first sentence of this paragraph.

5. The identification of a relevant entity as a G-SII by the relevant authority shall include the Legal Entity Identifiers (LEIs) of all legal entities included in the prudential scope of consolidation of the G-SII. The relevant entity identified by the relevant authority shall disclose to the relevant authority by 1 March of the year following the year of the identification exercise its group structure by providing the LEIs, where available, of all consolidated entities in the group. The relevant entity shall ensure that its group structure as disclosed through the global LEI database is permanently updated.’;

(4) Article 5 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. By way of derogation from paragraph 1, the indicator values referred to in Article 6(1), Article 6(2), points (a), (b) and (c), and Article 6(4), points (a) and (b), shall also include insurance subsidiaries.’;

(b) paragraph 2 is replaced by the following:

‘2. The relevant authority shall determine the score of each relevant entity in the sample as the simple average of the category scores subject to a maximum category score of 500 basis points for the category measuring substitutability.

Each category score, except for the category measuring the substitutability of the services and of the financial infrastructure provided by the group, shall be calculated as the simple average of the values resulting from dividing each of the indicator values of that category by the denominator of the indicator notified by the EBA.

The score for the category measuring the substitutability of the services and of the financial infrastructure provided by the group shall be calculated as the weighted average of the indicator values of that category. For that purpose, the indicators for assets under custody as referred to in Article 6(3), point (a), and for payments activity as referred to in Article 6(3), point (b), shall be weighted in full, and the indicators for underwritten transactions in debt and equity markets as referred to in Article 6(3), point (c), and for trading volume as referred to in Article 6(3), point (d), shall be weighted at 50 %.

The scores shall be expressed in basis points and shall be rounded to the nearest whole basis point.’;

(c) the following paragraphs 5a and 5b are inserted:

‘5a. The relevant authority shall determine an additional overall score for each relevant entity with cross-border activities across participating Member States as referred to in Article 4(1) of Regulation (EU) No 806/2014 of the European Parliament and of the Council* by following the process set out in paragraph 2 of this Article, but shall replace the relevant entity’s indicator values referred to in Article 6(5), points (a) and (b) with those calculated in accordance with the second subparagraph of this paragraph, and shall

replace the corresponding denominators with the revised denominators provided by the EBA.

For the purposes of the first subparagraph, the relevant authority shall consider as domestic all claims and liabilities vis-à-vis counterparties established in participating Member States as referred to in Article 4(1) of Regulation (EU) No 806/2014. For the categories referred to in Art 131(2), points (a) to (d), of Directive 2013/36/EU, the relevant authority shall consider the same unchanged indicator values reported by the relevant entity and denominators notified by the EBA.;

5b. On the basis of the additional overall score referred to in paragraph 5a, a decision to reallocate a G-SII from a higher subcategory to a lower subcategory, in the exercise of sound supervisory judgement in accordance with Article 131(10), point (c), of Directive 2013/36/EU, shall be based on an assessment of whether the failure of the G-SII would have a lower negative impact on the global financial market and the global economy. That assessment shall, where appropriate, take into account any views or reservations adopted by the BCBS in accordance with its publicly available methodology for assessing the systemic importance of global systemically important banks.

The additional overall score referred to in paragraph 5a may determine the reallocation of the G-SII by the relevant authority to the next lower subcategory as referred to in paragraph 3 of this Article. The reallocation of the G-SII to a lower subcategory shall be limited to a maximum of one subcategory level.’

* Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(d) paragraph 6 is replaced by the following:

‘6. The decisions referred to in paragraphs 4, 5 and 5b shall be supported by ancillary indicators, which shall not be indicators of the probability that the relevant entity will fail. Such decisions shall be based on well-documented and verifiable quantitative and qualitative information.’

(5) in Article 6(3), the following point (d) is added:

‘(d) trading volume.’;

(6) Article 7 is deleted.

Article 2

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. Points (4)(a), 4(b) and (5) shall apply from 1 December 2021.

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

Done at Brussels, 11.2.2021

For the Commission
The President
Ursula VON DER LEYEN