

Chapter 1

Commission Delegated Regulation (EU) No 1152/2014

Preamble

THE EUROPEAN COMMISSION,
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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, and in particular the third subparagraph of Article 140(7) thereof,

01/01/2021

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 Council should 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 recognised 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 Council,

HAS ADOPTED THIS REGULATION: