



Brussels, **XXX**  
C(2015) 6588/2

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

**of **XXX****

**amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of  
regulatory capital requirements for several categories of assets held by insurance and  
reinsurance undertakings**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Solvency II<sup>1</sup> is the modern prudential framework for insurance and reinsurance that will become fully applicable on 1 January 2016. This Regulation is an amendment to the Solvency II implementing rules, which are laid down in Commission Delegated Regulation (EU) 2015/35 of 10 October 2014<sup>2</sup> (Solvency II Delegated Act). The Solvency II Delegated Act constitutes the core of the single rulebook for insurance in the Union and specifies the parameters of the standard formula to calculate the Solvency Capital Requirement, including the specific calibrations for risk factors to be applied on different types of insurers' investments.

The current amendment to the Solvency II Delegated Act introduces tailored treatments to insurers' investments in infrastructure, in European Long-Term Investment Funds (ELTIFs) and in equities traded through multilateral trading platforms. It also clarifies and extends the scope of the transitional measure for investments in equities.

The Investment Plan for Europe announced in November 2014 focuses on removing obstacles to investment, providing visibility and technical assistance to investment projects and making smarter use of new and existing financial resources. To achieve these goals, the plan is active in three areas: (1) mobilising investments of at least €315 billion in three years; (2) supporting investment in the real economy; and (3) creating an investment friendly environment.

In line with the objective to create an investment friendly environment, the Commission has set the objective of establishing a well-regulated and integrated Capital Markets Union, encompassing all Member States, with a view to maximising the benefits of capital markets and non-bank financial institutions for the economy. The Capital Markets Union also aims at unlocking capital around Europe, which is currently frozen, and put it to work for the economy.

In this framework, it is important to ensure that available funds flow to where they are most needed and that specific impediments to the financing of long-term investment projects are removed. Institutional investment by insurers, as long-term investors, plays a crucial role, because insurance undertakings are large institutional investors that manage about EUR 10 trillion in assets. This initiative will redirect some of these resources to investment in infrastructure by ensuring that the regulatory environment does not pose unjustified obstacles to this type of investment.

The Commission has already taken important steps to remove barriers to long-term investment in the Solvency II framework and the Solvency II Delegated Act and will allow insurers to invest more in long-term assets by removing national restrictions on the composition of their asset portfolio. However, Solvency II implementing rules do not yet account for the specific nature of some long-term investments. Given the objectives of the investment plan to remove obstacles to investment in the real economy, it was essential to conduct additional work in order to refine the quantitative requirements for infrastructure

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<sup>1</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1, as amended by Directives 2011/89/EC, 2012/23/EU, 2013/23/EC, 2013/58/EU, and 2014/51/EU.

<sup>2</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 12, 17.1.2015, p. 1.

investment, in order to ensure that Solvency II does not impose inadequate or punitive capital requirements.

A more tailored treatment of investments in infrastructure projects in the Solvency II standard formula was already identified in the "Omnibus II" Directive as an area for prioritisation<sup>3</sup>. By the time of the adoption of the Solvency II Delegated Acts, no technical advice was available on which a new infrastructure asset class could be based. The European Insurance and Occupational Pensions Authority (EIOPA), in its Technical Report on Standard Formula Design and Calibration for certain Long-Term Investments, had however conducted an initial analysis of the risk profile of infrastructure projects, that showed some promising findings and could be used as a basis for further work. Significant work has hence been conducted on the risk of these investments in the meantime and the Commission requested the Technical Advice of EIOPA, which means that these legislative changes can now be taken forward. This Regulation is adopted shortly after the adoption of the EIOPA Technical Advice, in order to ensure that these amended rules can be in place as soon as possible, in particular in light of the Solvency II framework becoming fully applicable on 1 January 2016.

In addition, Solvency II should duly reflect other European initiatives aimed at improving long-term investment opportunities and the efficiency of capital markets. Hence, the framework should be updated following the adoption of the Regulation of European Long-Term Investment Funds<sup>4</sup>, which will help tackle barriers to long-term investment. Also, in light of the recently revised legal rules<sup>5</sup>, the increased security and importance of multilateral trading facilities (MTFs) should be accounted for by giving them the same status as regulated markets.

It is also important to ensure that the transitional measures of Solvency II have a full effect in preventing disruption to existing investing strategies and aiming at a smooth introduction of the new capital rules. This particularly concerns equity investments, and the present Regulation therefore clarifies and extends the scope of the transitional measure for investments in equities.

This Regulation also amends and corrects a number of drafting errors throughout the Solvency II Delegated Act.

## **1.2 Legal background**

The substantive amendments introduced by this Regulation to the Solvency II Delegated Act, regarding the treatment of infrastructure investments, of ELTIFs and of equities traded on multilateral trading facilities, are based on Articles 111(1)(b) and (c) of the Solvency II Directive. The amendment on the scope of the equity transitional is based on Article 308b(13) of the Solvency II Directive.

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<sup>3</sup> Recital 60, Directive 2015/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), OJ L 153, 22.05.2014, p. 1.

<sup>4</sup> Regulation (EU) 2015/760 of 29 April 2015 on European long-term investment funds, OJ L 123, 19.05.2015, p.98.

<sup>5</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.06.2014, p.84, and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p.349.

The amendments to correct minor drafting errors in the Solvency II Delegated Act are based on Article 31(4), Article 75(2) and (3), Article 92(1a) and Article 111(1)(b), (c) and (m).

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

As regards infrastructure amendments, the Commission asked EIOPA for technical advice on whether and how it would be appropriate to amend the Solvency II standard formula for the calculation of the solvency capital requirement. EIOPA conducted a public consultation on draft technical advice between 2 July 2015 and 9 August 2015, and adopted its final technical advice on 29 September 2015.

Nineteen stakeholders responded to the public consultation, including associations of insurers, capital market intermediaries, investors, policyholders and individual undertakings. The respondents mostly welcomed the initiative. They emphasised that some detailed criteria could severely limit the scope of the infrastructure projects admitted, and that the capital charge for bonds and loans could be reduced further. In its final Technical Advice, EIOPA has made use of these comments, in particular by introducing modifications to the list of criteria.

As regards all issues covered by this Act, the Expert Group on Banking, Payments and Insurance (insurance formation), bringing together experts from Member States, with the European Parliament as observer, was consulted in meetings on 5 March 2015 and on 14 July 2015, and in writing between 10 August 2015 and 21 August 2015.

The amendment concerning ELTIFs was also discussed in the European Parliament, in the ECON Committee meeting, on 26 May 2015. Members of the European Parliament called for a rapid adoption of this Act. In the context of an exchange of views on the Solvency II Delegated Act on 11 November 2014, ECON Members emphasized that they would encourage further work on a separate asset class and specific lower risk charges for investment into infrastructure projects.

The list of minor drafting and typographical errors corrected by this Regulation was collected from all interested stakeholders (insurance industry associations, national supervisory authorities and EIOPA).

## **3. IMPACT ASSESSMENT**

The amendment creating a distinct asset class for infrastructure investments follows a request for advice to EIOPA, who analysed the available data and carried out a public consultation before delivering its advice, as outlined above.

The objective of this Regulation is to encourage insurers' investment in a broad range of safe infrastructure projects, including innovative projects, systems and networks. Therefore, the new infrastructure asset class is not a list of lines of business or industries, but is defined based on EIOPA's advice. In its advice, EIOPA frames the new asset class with a list of technical criteria that ensure that eligible investments exhibit a better risk profile than other equity or debt investments. Only for investments that fulfil these criteria, the prudential risk charges are reduced. The prudential soundness of the initiative is thus assured.

The definition of the new asset class in this amendment is aligned with EIOPA's advice, with no substantial deviations. The core criteria that frame the asset class comprise requirements that ensure the existence of a sound business plan and investor control, and focus on the predictability of cash flows, stability under stressed conditions and a contractual framework that ensures investor protection. The new asset class comprises equity investment as well as

investment grade and unrated debt. Non-investment grade debt is excluded for prudential reasons.

The qualifying category is limited to investments in special purpose entities that own, finance, develop or operate infrastructure assets that provide or support essential public services. This investment model is common practice in infrastructure financing, but does not extend to corporate investment in infrastructure companies, that were not covered by the scope of EIOPA's advice. The Commission will review whether qualifying criteria for corporate structures that perform similar functions to infrastructure project entities, and whose risk profile may hence merit a similar reduction in capital requirements, can be established, with the view to extend the infrastructure asset class to such exposures going forward.

Qualifying infrastructure investments are defined as a set of high level criteria. More detailed guidance on the verification of these criteria is not given in the context of this amendment, as in practice it will be the responsibility of insurance and reinsurance undertakings to perform due diligence and ensure that these criteria are met. Criteria that could have resulted in inadvertent exclusion of safer infrastructure projects were amended. A detailed overview of such modifications is given below:

- In line with EIOPA's advice, this Regulation requires that infrastructure projects qualifying for the new asset class should generate predictable cash flows, and introduces a detailed list of conditions that the revenues of the project should meet in order for this criterion to be fulfilled. However, EIOPA's advice limited the parties that purchase the good of services provided by the infrastructure project to government and investment grade entities. Stakeholders pointed out that this condition would be inappropriate in cases where services would be provided to entities that could be easily replaced. Consequently, and bearing in mind the general objective to reduce reliance on external credit ratings, the criterion was extended to such cases;
- EIOPA's advice requires infrastructure projects to have a reserve fund. Stakeholders pointed out that this requirement is not necessarily aligned with industry practice, for example in cases where contingency funding requirements would be already included in the cost estimate buffers of a project. Consequently, this criterion was modified in order to make other financial arrangements eligible to cover contingency funding;
- Where no external assessment by a nominated external credit assessment institution<sup>6</sup> for an investment in qualifying infrastructure is available, additional criteria apply in order to ensure that the investment is subject to limited risk. Those criteria should ensure that the infrastructure project provides for professional management of the project in its construction phase, ensures adequate mitigation of construction risk, limits technology and refinancing risk and prohibits the project entity from entering into speculative derivative positions. EIOPA's advice proposes that unrated qualifying investments should be located in the EEA and the OECD, and that such investments should be subject to an assessment of the stability of the political and legal environment of these countries. Such an assessment was not considered objective or necessary;
- EIOPA's advises requiring an equity investor that acts as a sponsor to the infrastructure project to have sufficient management expertise and to provide financial stability. Stakeholders pointed out that such a criterion would unduly limit

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As defined in Article 13(40) of Directive 2009/138/EC.

the scope of the asset class, for example in cases where there may be one equity investor with significant experience in technology and construction, whereas another equity investor provides the necessary financial strength. To ensure that such projects would not be unduly excluded, this criterion was modified to allow a group of equity investors to collectively fulfil this criterion.

On the calibration of equity investments in qualifying infrastructure, EIOPA has proposed a range of 30%-39%. The lower end of this range is calibrated on data relating to Private Finance Initiative project companies (e.g. public/private partnership), and it was considered that such data would be most relevant for the qualifying infrastructure asset class as framed by the criteria.

For debt investments, EIOPA made use of data that showed that the recovery rates of infrastructure investments are significantly higher than for other corporate investments. Based on this evidence, EIOPA advised a calibration for the credit risk related part of the infrastructure debt. EIOPA has also analysed the liquidity related part of the spread and found evidence for lower liquidity risk where an infrastructure investment would be held to maturity. The calibration of debt investments in infrastructure adopted in this act is based on a combination method to combine the two approaches that was developed by EIOPA.

As regards risk management, EIOPA builds on established requirements in Solvency II, but adds provisions on due diligence and performance monitoring that are specific to infrastructure assets. This approach appears appropriate in light of the overall purpose of these amendments and has been mirrored in this Regulation.

Regarding the attribution of European Long-Term Investment Funds (ELTIFs) to Type 1 equity, the impact assessment report for Commission Delegated Regulation (EU) 2015/35 can be considered to cover the present ELTIF amendment. It specifically discussed the treatment of insurers' investments in European Venture Capital Funds, European Social Entrepreneurship Funds and European Long-Term Investment Funds (even though the draft Regulation<sup>7</sup> creating a framework for the latter was not yet adopted at the time).

The amendment to clarify the application of the measure to progressively introduce the Solvency II charges for equities purchased before 1 January 2016, as regards equities held in managed funds, responds to comments from stakeholders that there was lack of clarity as to the application of the transitional measure when a look-through of the fund is not possible. Clarification of the application was needed well in advance of the end of 2015. The extension of the transitional measure to cover Type 2 equities is a measure which will prevent any disruptive sell-off of unlisted equities in the run-up to the application of Solvency II on 1 January 2016.

The amendment concerning MTFs constitutes a simple alignment of Solvency II with recently adopted European legislation (Directive 2014/65/EU, Regulation (EU) 600/2014) and hence no impact assessment is necessary.

In order to ensure that the standard formula continues to meet the requirements set out in paragraphs 2 and 3 of Article 101 of Directive 2009/138/EC on an ongoing basis, the Commission will review the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement with the standard formula in the Solvency II Delegated Act, including the amendments introduced by this Regulation<sup>8</sup>.

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<sup>7</sup> Regulation (EU) 2015/760 of 29 April 2015 on European long-term investment funds.

<sup>8</sup> Recital 150, Solvency II Delegated Act.

### **3.1 Analysis of costs and benefits**

Costs and benefits of providing for more detailed asset classes, such as infrastructure and ELTIF, were analysed in the Impact Assessment Report for Commission Delegated Regulation (EU) 2015/35.

The costs of the choices exercised by the Commission described in that report arise essentially from reporting and transparency requirements. The present Regulation does not affect that area.

The benefits, on the other hand, accrue both to insurance undertakings (greater risk sensitivity of the capital requirements mean more acute risk management and greater ability to invest in steady return investments) and to the wider society (greater investment in growth-enhancing sectors, in particular infrastructure and SMEs). These benefits are considered to considerably outweigh the costs.

There is no effect on the EU budget.

### **3.2 Proportionality**

In accordance with the principle laid down in Article 29(4) of the Solvency II Directive, the need for proportionality is duly taken into account across all of Commission Delegated Regulation (EU) 2015/35, which provides for numerous simplifications in the quantitative calculation requirements, where justified by the nature, scale and complexity of the risks that they face.

This is also reflected in the specific amendments on ELTIF and the equity transitional introduced by the present Regulation.

In principle, insurers' investments held through a fund are subject to a "look-through approach" whereby capital requirements are calculated on each underlying asset in the fund as if they were held directly. Where such a look-through approach is not possible, exposures to funds become subject a more onerous treatment (Type 2 equities).

However, for the sake of proportionality and effectiveness of the reduced risk factor applicable in ELTIFs, this Regulation provides that insurers shall keep the benefit of the Type 1 equity treatment even if it is not possible to look through a given ELTIF. Similarly, this Regulation provides for a solution to apply the transitional measure on equity capital charge, when the equities are held through a fund and when it would be too costly to trace the relevant date of purchase.

The new infrastructure asset class provides for a specific, lowered calculation that is precisely targeted to capture the nature, scale and complexity of these exposures and hence respects the principle of proportionality.

The amendment concerning multilateral trading platforms does not increase the complexity of the framework, as it simply reallocates these exposures to another existing asset class in the Solvency II standard formula.

### **3.3 Subsidiarity**

The objective of this Delegated Regulation is to introduce a new asset class tailored for investment projects, to facilitate and encourage investment by insurance undertakings into such assets.

Member States cannot take such action by themselves to further encourage insurance companies to invest in infrastructure projects as the calculation and parameters of the solvency capital requirement have been fully harmonised through the Solvency II Directive

and Delegated Act. This Regulation complements this framework, whilst respecting the principle of proportionality as set out above, and therefore is in line with the principle of subsidiarity.

## **4. LEGAL ELEMENTS OF THE DELEGATED ACT**

### **4.1 Article 1**

#### **4.1.1 Amendments regarding the treatment of qualifying infrastructure investments**

This Regulation introduces the concept of 'qualifying infrastructure investments', which benefit from a specific treatment. A general definition of infrastructure project entities is first introduced in Article 1 of Commission Delegated Regulation (EU) 2015/35, focusing on special purpose entities investing in physical structures or facilities, systems and networks that provide or support essential public services.

A new Article 164a is inserted to specify the characteristics of the 'qualifying infrastructure investments'. The list of qualification criteria is intended to ensure that secure projects qualify, without being excessively restrictive.

This Regulation introduces a specific treatment in the solvency capital requirement for 'qualifying infrastructure investments' in the form of equities. Article 168 is amended to set a separate capital requirement for qualifying infrastructure equities, added to the Type 2 equities capital charge. Article 169 is amended to set the calibration at a decrease of 30% of the value of qualifying infrastructure investments.

This Regulation also introduces a specific treatment in the solvency capital requirement for 'qualifying infrastructure investments' in the form of bonds or loans. Article 180 of Commission Delegated Regulation (EU) 2015/35 is amended to provide these investments with a specific calibration, depending on the credit assessment of the infrastructure project. Investments in bonds or loans in an infrastructure project with a credit quality lower than step 3 do not benefit from this adapted calibration and a risk factor equivalent to credit quality step 3 should be applied if no credit assessment by a nominated external credit assessment institution is available.

The equity capital charge is in the range given by an analysis based on the prices of a bucket of relevant listed equities. The risk factors applicable to bonds and loans derive from two adjustments presented in EIOPA's advice, taking into account firstly that infrastructure debt is characterised by high recovery rates, and secondly that it may be more likely to be held to maturity than other investments.

This Regulation combines the tailored calibration with provisions regarding the management of the specific risk by the undertaking. An Article 261a is introduced to require adequate due diligence before making a qualifying infrastructure investment, the regular performance of stress tests and an asset and liability management policy ensuring that the undertaking remains able to hold the investment to maturity.

#### **4.1.2 Amendments regarding the treatment of investments in ELTIFs**

This Regulation extends to European Long-Term Investment Funds the existing provisions regarding the specific treatment of European Venture Capital Funds and European Social Entrepreneurship Funds, laid down in Article 168(6)(a) and (b) of Commission Delegated Regulation (EU) 2015/35.

To this end, it adds a provision in Article 168(6) so that equities held within ELTIFs (or units or shares of ELTIFs where the look through approach is not possible) are considered as Type



1 equities, attracting a lower risk factor under the standard formula for the Solvency Capital Requirement.

This choice is supported by the analysis of historical performance of a private equity index (LPX NAV50) for the impact assessment. This benchmark is relevant because most equities held within European Venture Capital Funds, European Social Entrepreneurship Funds and European Long-Term Investment Funds are likely to be unlisted. Based on this index, the value-at-risk with a 99.5% confidence level over 1 year is close to 39%. This justifies treating equities held within those funds as Type 1 equities.

#### **4.1.3 Amendments regarding the treatment of equities traded on multilateral trading facilities**

This Regulation accounts for the entry into force of Directive 2014/65/EU and of Regulation (EU) No 600/2014, which ensured the application of the same rules to multilateral trading facilities and regulated markets. Article 168 of Commission Delegated Regulation (EU) 2015/35 is therefore amended to provide equities traded on multilateral trading facilities with an equivalent treatment equities traded on regulated markets, regarding the solvency capital requirement.

#### **4.1.4 Amendments regarding the scope of the equity transitional measure**

This Regulation amends Commission Delegated Regulation (EU) 2015/35 aimed at preventing sudden or large-scale portfolio reallocations in the area of equities before Solvency II becomes applicable. Article 173 is amended to extend to Type 2 equities the progressive introduction over 7 years of the solvency capital requirement for equities purchased before 1 January 2016.

To ensure that equities held within collective investments undertakings or investments packaged as funds are treated equally to directly held equities as regard this transitional measure, Article 173 is also amended to introduce a simplified methodology in case where it would not be possible, because of disclosure rules or out of cost considerations, to trace the date of purchase of the equities by the fund manager. The undertaking can in that case estimate each year the proportion of equities which were purchased before 1 January 2016, and apply the transitional measure to this part of the fund.

#### **4.1.5 Amendment of minor drafting errors**

This Article also brings amendments to Commission Delegated Regulation (EU) 2015/35 to correct minor drafting mistakes. The main corrections introduced to avoid misinterpretation of the text are the following:

- Clarification on the consequences in terms of valuation methods, of excluding a related undertaking from the scope of group supervision, addressing all possible cases where such an exclusion may be decided by the group supervisor (see Article 1(2));
- Regarding strategic participations in financial and credit institutions, where Commission Delegated Regulation (EU) 2015/35 refers to the consolidation method from Directive 2002/87/EC, this should not be understood as requiring that the group is also a financial conglomerate subject to supplementary supervision in accordance with that Directive (see Article 1(3));
- As regards aggregate statistical data, the time periods for reporting shall be aligned and therefore disclosures before 31 December 2020 shall include data of all previous years starting from 1 January 2016. Therefore, Article 316(2) of Delegated Regulation (EU) 2015/35 should be amended (see Article 1(12)).

## **4.2 Article 2: Correction of typographical errors**

In addition, this Regulation also corrects a number of typographical errors in the Solvency II Delegated Act.

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

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**amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance<sup>9</sup>, and in particular Article 31(4), Article 75(2) and (3), Article 92(1a), Article 111(1)(b), (c), and (m) and Article 308b(13) thereof,

Whereas:

- (1) The Investment Plan for Europe, adopted by the Commission in November 2014, focuses on removing obstacles to investment, providing visibility and technical assistance to investment projects and making smarter use of new and existing financial resources. As part of this plan, the set-up of a European Fund for Strategic Investments (EFSI) through Regulation (EU) 2015/1017 of the European Parliament and of the Council<sup>10</sup>, aims to overcome the current investment gap in the EU by mobilising private financing for strategic investments which the market cannot finance alone. It will support strategic investments in infrastructure as well as risk finance for small businesses. Simultaneously, work on the establishment of a Capital Markets Union will deepen financial integration and help increase growth and competitiveness in the EU
- (2) In order to contribute to these aims, as well as to the Union's objective of long-term sustainable growth, investments by insurers, which are large institutional investors, in infrastructure or through EFSI, should be facilitated. To facilitate such investment, a new asset class for infrastructure investments should be established within the framework established by Directive 2009/138/EC. Parallel implementation of this type of initiative together with EFSI, should increase the overall impact for growth and jobs in the Union.
- (3) The Commission requested and received technical advice from the European Insurance and Occupational Pensions Authority as regards the criteria and calibration of the new asset class for infrastructure investments.

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<sup>9</sup> OJ L 335 17.12.2009, p. 1.

<sup>10</sup> Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments, (OJ L 169, 01.07.2015, p.1).

- (4) In line with the objective of the Investment Plan for Europe to support investment that helps strengthen Europe's infrastructure, with a particular focus on building a more interconnected single market, the new infrastructure asset class should not be limited to specific sectors or physical structures, but include all systems and networks that provide and support essential public services.
- (5) To ensure that the infrastructure asset class is effectively delimited to infrastructure investments, qualifying infrastructure assets should be owned, financed, developed or operated by an infrastructure project entity that does not perform any other function.
- (6) The new infrastructure asset class should be framed by criteria that ensure that infrastructure investments exhibit a sound risk profile with respect to their stress resilience, predictability of cash flows and protection provided by the contractual framework. Where it can be evidenced that infrastructure investments exhibit a better risk profile than other corporate investments, the risk charges in the spread and equity risk sub-modules of the standard formula should be reduced.
- (7) The infrastructure project entity should provide a contractual framework that ensures a high degree of protection to its investors, including provisions against losses from the termination of the project by the party that has agreed to purchase goods and services, as could be triggered by the termination of a purchase agreement. Sufficient financial arrangements should be in place to cover the contingency funding and working capital requirements.
- (8) In order to reduce the risk to lenders, a sufficient degree of control over the infrastructure project entity should be established, including security in assets and equity, as well as limiting the use of cash-flows and activities.
- (9) Where the calibration for investments in bonds and loans is reduced based on the assumption that most infrastructure investments are held to maturity, the insurance or reinsurance undertaking should be able to demonstrate that it is able to do so.
- (10) In order to incentivise infrastructure investments with high recovery rates, the new asset class should be limited to investment grade debt, and only to senior debt where no external assessment is available. Nevertheless, to remain consistent with the framework for equities established by Directive 2009/138/EC, the inclusion of infrastructure equity in this new asset class should not depend on the existence or the level of any external assessment of the infrastructure entity.
- (11) Where no external assessment by a nominated external credit assessment institution (ECAI) for an investment in qualifying infrastructure is available, additional criteria should apply in order to ensure that the investment is subject to limited risk. Those criteria should provide for professional management of the project in its construction phase, ensure adequate mitigation of construction risk, limit operating and refinancing risk, and prohibit the project from entering into speculative derivative positions.
- (12) Where no external assessment by a nominated ECAI for an investment in qualifying infrastructure is available, it should be ensured that the infrastructure project is subject to a stable political environment.
- (13) Projects based on innovative technology or design should be eligible to fall within the scope of this new asset class, to ensure that the EU can continue to strive to be at the forefront of technological developments as they evolve. To ensure that projects based on innovations are safe, insurers should carry out appropriate due diligence to verify that technology is tested. This can include prototype testing, pilot testing and other forms of testing to demonstrate that the project has sound technology and design.

- (14) Overall, the combination of these criteria, based on EIOPA's technical advice, ensures that a prudentially sound system is in place, as those infrastructure assets that benefit from a reduction in capital requirements are safer and less volatile than comparable corporate investments.
- (15) EIOPA has analysed data on infrastructure equity indices, listed infrastructure equities and private finance initiative companies. In conclusion, a range of 30%-39% for the infrastructure stress was advised. In line with the objective of the Investment Plan for Europe to foster investment in the real economy, a calibration of 30% is chosen for the new infrastructure asset class, as this calibration provides most effective incentives to invest in infrastructure.
- (16) In line with EIOPA's advice, the symmetric adjustment of the equity capital charge should be applied to the stress factor on infrastructure equities on a pro rata basis.
- (17) The reduction of risk charges in the spread risk sub-module should account for the fact that evidence is available to show that infrastructure investments exhibit better recovery rates than corporate debt and are less sensitive to broader economic factors. Consequently, for the new asset class, the stress to the credit component of the spread should be reduced in line with the calibration provided by EIOPA. To take account of the qualifying criterion that infrastructure investments can be held to maturity, also the stress to the liquidity component of the spread should be reduced.
- (18) Where the stress to the liquidity component of the spread is reduced for qualifying infrastructure investments, this reduction should also apply to assets in the matching adjustment portfolio, however without any double counting of reduced liquidity risk. For this reason, the spread stress applicable to qualifying infrastructure assets in the matching adjustment portfolio should be either the reduced stress applicable to matching adjustment assets or the spread stress for qualifying infrastructure assets, whichever is the lower.
- (19) A more appropriate treatment of insurance and reinsurance undertakings' investment in funds established by Regulation (EU) 2015/760 of the European Parliament and of the Council<sup>11</sup> should be ensured, in line with the treatment of investments in European Venture Capital Funds and in European Social Entrepreneurship Funds already provided for in Article 168 of Commission Delegated Regulation (EU) 2015/35<sup>12</sup>.
- (20) In recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). Directive 2014/65/EU of the European Parliament and of the Council<sup>13</sup> ensures that MTFs are subject to similar requirements as regulated markets regarding whom they may admit as members or participants. Regulation (EU) 600/2014 of the European Parliament and of the Council<sup>14</sup> also imposes similar transparency requirements to MTFs and regulated markets. In order to account for the increased relevance of MTFs and the convergence of rules applicable to MTFs and

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<sup>11</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.05.2015, p.98).

<sup>12</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

<sup>13</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (OJ L 173, 12.06.2014, p.349).

<sup>14</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, (OJ L 173, 12.06.2014, p.84).

regulated markets alike, exposures traded on a MTF should be considered as equity type 1 in the equity risk sub-module.

- (21) Directive 2014/51/EU of the European Parliament and of the Council<sup>15</sup> introduced a transitional measure applicable to equity investments purchased before 1 January 2016. In order to avoid setting incentives for significant disinvestment from unlisted equities before the framework established by Directive 2009/138/EC becomes applicable, the scope of the transitional measure should not be limited to listed equities.
- (22) To allow for a proportionate treatment of equities held within collective investment undertakings or investments packaged as funds, where the look-through approach is not possible, this Regulation further specifies that the transitional measure set out in Article 308b(13) of Directive 2009/138/EC shall apply to the proportion of equities held within the collective investment undertaking or investment packaged as funds in accordance with the target underlying asset allocation on 1 January 2016, provided the target allocation is available to the undertaking. This allows undertakings to estimate the proportion of equities purchased by the fund manager before 1 January 2016, where tracing these purchases is not possible because of limitations imposed by disclosure rules, or is prohibitively costly. Thereafter, the proportion of equities to which the transitional measure is applied shall be reduced annually in proportion to the asset turnover ratio of the collective investment undertaking or investment packaged as funds.
- (23) Delegated Regulation (EU) 2015/35 includes several minor drafting errors which should be amended accordingly.
- (24) In particular, Delegated Regulation (EU) 2015/35 sets out the valuation method for holdings in related undertakings that are excluded from the scope of group supervision or deducted from the own funds eligible for the group solvency. The consequences in terms of valuation for holdings in related undertakings should be the same, irrespective of the reason for excluding a given related undertaking from the scope of group supervision and as a result, all situations where a related undertaking may be excluded from the scope of group supervision should be captured. Therefore, Article 13 should be amended.
- (25) Regarding strategic participations in financial and credit institutions, where reference is made to method 1 of Directive 2002/87/EC of the European Parliament and of the Council<sup>16</sup> this should not mean that the group must also qualify as a conglomerate and be subject to supplementary supervision pursuant to that Directive. To apply the exemption, it is sufficient that the financial or credit institution is included in the calculation of group solvency pursuant to Directive 2009/138/EC. Both the consolidation methods in Directive 2002/87/EC and in Directive 2009/138/EC are deemed equivalent, as stated in Article 8 of Commission Delegated Regulation (EU)

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<sup>15</sup> Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), (OJ L 153, 22.05.2014, p. 1).

<sup>16</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, (OJ L 35, 11.02.2003, p.1).

No 342/2014<sup>17</sup>. Therefore, Article 68(3) of Delegated Regulation (EU) 2015/35 should be amended.

- (26) As regards aggregate statistical data, the time periods for reporting shall be aligned and therefore disclosures before 31 December 2020 shall include data of all previous years starting from 1 January 2016. Therefore, Article 316(2) of Delegated Regulation (EU) 2015/35 should be amended.
- (27) Delegated Regulation (EU) 2015/35 also contains a number of typographical errors, such as wrong internal cross-references, which should be corrected.
- (28) In applying the requirements set out in this Regulation, account should be taken of the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking. The burden and complexity imposed on insurance undertakings should be proportionate to their risk profile. In applying the requirements set out in this Regulation, information should be considered material if that information could influence the decision-making or judgement of the intended users of that information.
- (29) In order to enhance legal certainty about the supervisory regime before the Solvency II regime becomes fully applicable on 1 January 2016, it is important to ensure that this Regulation enters into force as soon as possible.

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Amending provisions*

Commission Delegated Regulation (EU) 2015/35 is amended as follows:

1. in Article 1, the following points 55a and 55b are inserted:

'55a. 'Infrastructure assets' means physical structures or facilities, systems and networks that provide or support essential public services.

55b. 'Infrastructure project entity' means an entity which is not permitted to perform any other function than owning, financing, developing or operating infrastructure assets, where the primary source of payments to debt providers and equity investors is the income generated by the assets being financed.';
2. Article 13 is amended as follows:
  - (a) in paragraph 2, point (a) is replaced by the following:

'(a) undertakings that are excluded from the scope of the group supervision under Article 214(2) of Directive 2009/138/EC';
  - (b) paragraph 6 is replaced by the following:

'6. Where the criteria referred to in Article 9(4) of this Regulation are satisfied, and where the use of the valuation methods referred to in points (a) and (b) of paragraph 1 is not possible, holdings in related undertakings may be valued based on the valuation method the insurance

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<sup>17</sup> Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates, (OJ L 100, 03.04.2015, p.1).

or reinsurance undertakings uses for preparing its annual or consolidated financial statements. In such cases, the participating undertaking shall deduct from the value of the related undertaking the value of goodwill and other intangible assets that would be valued at zero in accordance with Article 12(2) of this Regulation.';

3. in Article 68, paragraph 3 is replaced by the following:

'3. Notwithstanding paragraphs 1 and 2, insurance and reinsurance undertakings shall not deduct strategic participations as referred to in Article 171 which are included in the calculation of the group solvency on the basis of method 1 as set out in Annex I to Directive 2002/87/EC or on the basis of method 1 as set out in Article 230 of Directive 2009/138/EC.';

4. in Title I, Chapter, V Section 5, the following Subsection 1a is inserted :

“Subsection 1a  
Qualifying infrastructure investments

*Article 164a*  
*Qualifying infrastructure investments*

1. For the purposes of this Regulation, qualifying infrastructure investment shall include investment in an infrastructure project entity that meets the following criteria:

- (a) the infrastructure project entity can meet its financial obligations under sustained stresses that are relevant for the risk of the project;
- (b) the cash flows that the infrastructure project entity generates for debt providers and equity investors are predictable;
- (c) the infrastructure assets and infrastructure project entity are governed by a contractual framework that provides debt providers and equity investors with a high degree of protection including the following:
  - (a) where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the contractual framework shall include provisions that effectively protect debt providers and equity investors against losses resulting from the termination of the project by the party which agrees to purchase the goods or services provided by the infrastructure project entity;
  - (b) the infrastructure project entity has sufficient reserve funds or other financial arrangements to cover the contingency funding and working capital requirements of the project;

Where investments are in bonds or loans, this contractual framework shall also include the following:

- (i) debt providers have security to the extent permitted by applicable law in all assets and contracts necessary to operate the project;
- (ii) equity is pledged to debt providers such that they are able to take control of the infrastructure project entity prior to default;
- (iii) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;



- (iv) contractual restrictions on the ability of the infrastructure project entity to perform activities that may be detrimental to debt providers, including that new debt cannot be issued without the consent of existing debt providers;
  - (d) where investments are in bonds or loans, the insurance or reinsurance undertaking can demonstrate to the supervisor that it is able to hold the investment to maturity;
  - (e) where investments are in bonds for which a credit assessment by a nominated ECAI is not available, the investment instrument is senior to all other claims other than statutory claims and claims from derivatives counterparties;
  - (f) where investments are in equities, or bonds or loans for which a credit assessment by a nominated ECAI is not available, the following criteria are met:
    - (i) the infrastructure assets and infrastructure project entity are located in the EEA or in the OECD;
    - (ii) where the infrastructure project entity is in the construction phase the following criteria shall be fulfilled by the equity investor, or where there is more than one equity investor, the following criteria shall be fulfilled by a group of equity investors as a whole:
      - the equity investors have a history of successfully overseeing infrastructure projects and the relevant expertise;
      - the equity investors have a low risk of default, or there is a low risk of material losses for the infrastructure project entity as a result of the their default;
      - the equity investors are incentivised to protect the interests of investors;
    - (iii) the infrastructure project entity has established safeguards to ensure completion of the project according to the agreed specification, budget or completion date;
    - (iv) where operating risks are material, they are properly managed;
    - (v) the infrastructure project entity uses tested technology and design;
    - (vi) the capital structure of the infrastructure project entity allows it to service its debt;
    - (vii) the refinancing risk for the infrastructure project entity is low;
    - (viii) the infrastructure project entity uses derivatives only for risk-mitigation purposes.
2. For the purposes of paragraph 1(b), the cash flows generated for debt providers and equity investors shall not be considered predictable unless all except an immaterial part of the revenues satisfies the following conditions:
- (a) one of the following criteria is met:
    - (i) the revenues are availability-based;
    - (ii) the revenues are subject to a rate-of-return regulation;

- (iii) the revenues are subject to a take-or-pay contract;
  - (iv) the level of output or the usage and the price shall independently meet one of the following criteria:
    - it is regulated;
    - it is contractually fixed;
    - it is sufficiently predictable as a result of low demand risk;
- (b) where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the party which agrees to purchase the goods or services provided by the infrastructure project entity shall be one of the following:
- (i) an entity listed in Article 180(2) of this Regulation;
  - (ii) a regional government or local authority listed in the Regulation adopted pursuant to Article 109a(2)(a) of Directive 2009/138/EC;
  - (iii) an entity with an ECAI rating with a credit quality step of at least 3;
  - (iv) an entity that is replaceable without a significant change in the level and timing of revenues.;

5. Article 168 is amended as follows:

- (a) paragraphs 1, 2 and 3 are replaced by the following:

'1. The equity risk sub-module referred to in point (b) of the second subparagraph of Article 105(5) of Directive 2009/138/EC shall include a risk sub-module for type 1 equities, a risk sub-module for type 2 equities **and a sub-risk module for qualifying infrastructure equities.**

2. Type 1 equities shall comprise equities listed in regulated markets in countries which are members of the European Economic Area (EEA) or the Organisation for Economic Cooperation and Development (OECD), **or traded on multilateral trading facilities, as referred to in Article 4(1)(22) of Directive 2014/65/EU, whose registered office or head office is in EU Member States.**

3. Type 2 equities shall comprise equities **other than those referred to in paragraph 2**, commodities and other alternative investments. They shall also comprise all assets other than those covered in the interest rate risk sub-module, the property risk sub-module or the spread risk sub-module, including the assets and indirect exposures referred to in Article 84(1) and (2) where a look-through approach is not possible and the insurance or reinsurance undertaking does not make use of the provisions in Article 84(3).';

- (b) the following paragraph 3a is inserted:

'3a. Qualifying infrastructure equities shall comprise equity investments in infrastructure project entities that meet the criteria set out in Article 164a.';

- (c) paragraph 4 is replaced by the following:

“4. The capital requirement for equity risk shall be equal to the following:

$$SCR_{equity} = \sqrt{SCR_{type1equities}^2 + 2 \cdot 0.75 \cdot SCR_{type1equities} \cdot (SCR_{type2equities} + SCR_{quinf}) + (SCR_{type2equities} + SCR_{quinf})^2}$$

where:

- (a)  $SCR_{type1equities}$  denotes the capital requirement for type 1 equities,
  - (b)  $SCR_{type2equities}$  denotes the capital requirement for type 2 equities,
  - (c)  **$SCR_{quinf}$  denotes the capital requirement for qualifying infrastructure equities.**;
- (d) paragraph 6 is amended as follows:
- (i) points (a) and (b) are replaced by the following:

“(a) equities, **other than qualifying infrastructure equities**, held within collective investment undertakings which are qualifying social entrepreneurship funds as referred to in Article 3(b) of Regulation (EU) No 346/2013 of the European Parliament and of the Council<sup>18</sup> where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking;

(b) equities, **other than qualifying infrastructure equities**, held within collective investment undertakings which are qualifying venture capital funds as referred to in Article 3(b) of Regulation (EU) No 345/2013 of the European Parliament and of the Council<sup>19</sup> where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking;”;

- (ii) in point (c), point (i) is replaced by the following:

“(i) equities, **other than qualifying infrastructure equities**, held within such funds where the look-through approach set out in Article 84 of this Regulation is possible for all exposures within the alternative investment fund;”;

- (iii) the following point (d) is added:

'(d) equities, other than qualifying infrastructure equities, held within collective investment undertakings which are authorised as European long-term investment funds pursuant to Regulation (EU) 2015/760 where the look through approach set out in Article 84 of this Regulation is possible for all exposures within the collective investment undertaking, or units or shares of those funds where the look through approach is not possible for all exposures within the collective investment undertaking.';

6. in Article 169, the following paragraph 3 is added:

<sup>18</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

<sup>19</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

'3. The capital requirement for qualifying infrastructure equities referred to in Article 168 of this Regulation shall be equal to the loss in the basic own funds that would result from the following instantaneous decreases:

- (a) an instantaneous decrease equal to 22 % in the value of qualifying infrastructure equity investments in related undertakings within the meaning of Article 212(1)(b) and 212(2) of Directive 2009/138/EC where these investments are of a strategic nature;
- (b) an instantaneous decrease equal to the sum of 30 % and 77% of the symmetric adjustment as referred to in Article 172 of this Regulation in the value of qualifying infrastructure equities other than those referred to in point (a).';

7. in Article 170, the following paragraph 3 is added:

'3. Where an insurance or reinsurance undertaking has received supervisory approval to apply the provisions set out in Article 304 of Directive 2009/138/EC, the capital requirement for qualifying infrastructure equities shall be equal to the loss in the basic own funds that would result from an instantaneous decrease:

- (a) equal to 22 % in the value of the qualifying infrastructure equity corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC;
- (b) equal to 22 % in the value of qualifying infrastructure equity investments in related undertakings within the meaning of Article 212(1)(b) and (2) of Directive 2009/138/EC, where these investments are of a strategic nature;
- (c) equal to the sum of 30 % and 77% of the symmetric adjustment as referred to in Article 172 of this Regulation in the value of qualifying infrastructure equities other than those referred to in points (a) or (b).'

8. in Article 171, the introductory sentence is replaced by the following:

'For the purposes of Article 169(1)(a), (2)(a) **and (3)(a)** and of Article 170(1)(b), (2)(b) **and (3)(b)**, equity investments of a strategic nature shall mean equity investments for which the participating insurance or reinsurance undertaking demonstrates the following:';

9. Article 173 is replaced by the following:

*Article 173*

*Criteria for the use of transitional measure for standard equity risk*

1. The transitional measure for standard equity risk set out in Article 308b(13) of Directive 2009/138/EC shall only apply to equities that were purchased on or before 1 January 2016 and which are not subject to the duration- based equity risk pursuant to Article 304 of that Directive.

2. Where equities are held within an collective investment undertaking or other investments packaged as funds, and where the look-through approach is not possible, the transitional measure set out in Article 308b(13) of Directive 2009/138/EC shall be applied to the proportion of equities held within the collective investment undertaking or investment packaged as funds in accordance with the target underlying asset allocation on 1 January 2016, provided the target allocation is available to the undertaking. The proportion of equities to which the transitional is

applied shall be reduced annually in proportion to the asset turnover ratio of the collective investment undertaking or investment packaged as funds. Where the target allocation for equity investments of the collective investment undertaking or investment packaged as funds increases, the proportion of equities the transitional is applied to shall not increase.';

10. in Article 180, the following paragraphs 11, 12 and 13 are added:

'11. Exposures in the form of bonds and loans that fulfil the criteria set out in paragraph 12 shall be assigned a risk factor  $stress_i$  depending on the credit quality step and the duration of the exposure according to the following table:

Credit quality step		0		1		2		3	
Duration ( $dur_i$ )	$stress_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$
up to 5	$b_i \cdot dur_i$	-	0.64%	-	0.78%	-	1.0%	-	1.67%
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	3.2%	0.36%	3.9%	0.43%	5.0%	0.5%	8.35%	1.0%
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	5.0%	0.36%	6.05%	0.36%	7.5%	0.36%	13.35%	0.67%
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	6.8%	0.36%	7.85%	0.36%	9.3%	0.36%	16.7%	0.67%
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	8.6%	0.36%	9.65%	0.36%	11.1%	0.36%	20.05%	0.36%

12. The criteria for exposures that are assigned a risk factor in accordance with paragraph 11 shall be:

- (a) the exposure relates to a qualifying infrastructure investment that meets the criteria set out in Article 164a;
- (b) the exposure is not an asset that fulfils the following conditions:
  - it is assigned to a matching adjustment portfolio in accordance with Article 77b(2) of Directive 2009/138/EC;
  - it has been assigned a credit quality step between 0 and 2;
- (c) a credit assessment by a nominated ECAI is available for the exposure;
- (d) the exposure has been assigned a credit quality step between 0 and 3.

13. Exposures in the form of bonds and loans that meet the criteria set out in paragraph 12(a) and (b), but do not meet the criteria set out in paragraph 12(c), shall be assigned a risk factor  $stress_i$  equivalent to credit quality step 3 and the duration of the exposure in accordance with the table set out in paragraph 11.';

11. The last sentence of Article 181(b) shall be replaced by the following:

'For assets in the assigned portfolio for which no credit assessment by a nominated ECAI is available, **and for qualifying infrastructure assets that have been assigned credit quality step 3**, the reduction factor shall be 100%.'

12. the following Article 261a is inserted:

*'Article 261a*

*Risk management for qualifying infrastructure investments*

1. Insurance and reinsurance undertakings shall conduct adequate due diligence prior to making a qualifying infrastructure investment, including all of the following:
    - (a) a documented assessment of how the project satisfies the criteria set out in Article 164a, which has been subject to a validation process, carried out by persons that are free from influence from those persons responsible for the assessment of the criteria, and have no potential conflicts of interest with those persons;
    - (b) a confirmation that any financial model for the cash flows of the project has been subject to a validation process carried out by persons that are free from influence from those persons responsible for the development of the financial model, and have no potential conflicts of interest with those persons.
  2. Insurance and reinsurance undertakings with a qualifying infrastructure investment shall regularly monitor and perform stress tests on the cash flows and collateral values supporting the infrastructure project entity. Any stress tests shall be commensurate with the nature, scale and complexity of the risk inherent in the infrastructure project.
  3. Where insurance or reinsurance undertakings hold material qualifying infrastructure investments, they shall, when establishing the written procedures referred to in Article 41(3) of Directive 2009/138/EC, include provisions for an active monitoring of these investments during the construction phase, and for a maximisation of the amount recovered from these investments in case of a work-out scenario.
  4. Insurance or reinsurance undertakings with a qualifying infrastructure investment in bonds or loans shall set up their asset-liability management to ensure that, on an ongoing basis, they are able to hold the investment to maturity.';
13. in Article 316, paragraph 2 is replaced by the following:
- '2. As of 31 December 2020, the disclosure shall include data of the four previous years. In relation to disclosure before 31 December **2020**, it shall include data of all previous years starting from 1 January 2016.'

*Article 2*

*Correcting provisions*

Delegated Regulation (EU) 2015/35 is corrected as follows:

1. in Article 73(1), the first sentence is replaced by the following:

'The features referred to in Article 72 shall be either those set out in points (a) to (i) or those set out in point (j):'

2. Article 170 is corrected as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) an instantaneous decrease equal to 22 % in the value of the type 1 equities corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) equal to 22 % in the value of the type 2 equities corresponding to the business referred to in point (i) of Article 304(1) of Directive 2009/138/EC';

3. Article 176 is corrected as follows:

(a) paragraph 3 is replaced by the following:

'3. Bonds or loans for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor  $stress_i$  depending on the credit quality step and the modified duration  $dur_i$  of the bond or loan  $i$  according to the following table.

Credit quality step		0		1		2		3		4		5 and 6	
Duration ( $dur_i$ )	$stress_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$	$a_i$	$b_i$
up to 5	$b_i \cdot dur_i$	-	0.9 %	-	1.1 %	-	1.4 %	-	2.5 %	-	4.5 %	-	7.5 %
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	4.5%	0.5 %	5.5%	0.6 %	7.0%	0.7 %	12.5 %	1.5 %	22.5 %	2.5 %	37.5 %	4.2 %
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	7.0%	0.5 %	8.5%	0.5 %	10.5 %	0.5 %	20.0 %	1.0 %	35.0 %	1.8 %	58.5 %	0.5 %
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	9.5%	0.5 %	11%	0.5 %	13.0 %	0.5 %	25.0 %	1.0 %	44.0 %	0.5 %	61.0 %	0.5 %
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	12.0 %	0.5 %	13.5 %	0.5 %	15.5 %	0.5 %	30.0 %	0.5 %	46.6 %	0.5 %	63.5 %	0.5 %

(b) paragraph 4 is replaced by the following:

'4. Bonds and loans for which a credit assessment by a nominated ECAI is not available and for which debtors have not posted collateral that meets the criteria set out in Article 214 shall be assigned a risk factor  $stress_i$  depending on the duration  $dur_i$  of the bond or loan  $i$  according to the following table:

Duration ( $dur_i$ )	$stress_i$
up to 5	$3\% \cdot dur_i$
More than 5 and up to 10	$15\% + 1,7\% \cdot (dur_i - 5)$
More than 10 and up to 20	$23,5\% + 1,2\% \cdot (dur_i - 10)$
More than 20	$\min(35,5\% + 0,5\% \cdot (dur_i - 20); 1)$

4. in Article 179, paragraph 1 is corrected as follows:
- (a) the introductory sentence is replaced by the following:
- '1. The capital requirement  $SCR_{cd}$  for spread risk on credit derivatives other than those referred to in **paragraph 3** shall be equal to the higher of the following capital requirements:';
- (b) point (a) is replaced by the following:
- '(a) the loss in the basic own funds that would result from an instantaneous increase in absolute terms of the credit spread of the instruments underlying the credit derivatives;'
5. in Article 192, paragraph 2, in subparagraph 5, the formula is replaced by the following:
- ' $LGD = \max(90\% \cdot (Recoverables + 50\% \cdot RM_{re}) - F \cdot Collateral; 0)$ ';
6. in Article 218, paragraph 3 is replaced by the following:
- '3. Where insurance or reinsurance undertakings have concluded several excess of loss reinsurance contracts that each meet the requirements set out in point (d) of paragraph 2, and that in combination meet the requirements set out in points (a), (b) and (c) of paragraph 2, their combination shall be considered as one recognisable excess of loss reinsurance contract.';
7. in Article 296, paragraph 4 is replaced by the following:
- '4. The solvency and financial condition report shall include information on the areas set out in Article **263** in complying with the disclosure requirements of the insurance or reinsurance undertaking as laid down in paragraphs 1 and 3 of this Article.';
8. in Article 317, paragraph 3 is replaced by the following:
- '3. Aggregated annual statistical data concerning the supervised undertakings and groups in accordance with Article 316 shall be disclosed in respect of each calendar year within three months after the date by which the undertakings having a financial year ending 31 December are required by Article 312(1)(c) to submit annual quantitative templates. Information concerning the supervisory authorities shall be made available within four months after the 31 December of each calendar year.';
9. in Article 330, paragraph 1 is replaced by the following:
- '1. In assessing whether certain own funds eligible to cover the Solvency Capital Requirement of a related insurance or reinsurance undertaking, a related third country insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company cannot effectively be made available to cover the group Solvency Capital Requirement, the supervisory authorities shall consider all of the following elements:
- (a) whether the own-fund item is subject to legal or regulatory requirements that restrict the ability of that item to absorb all types of losses wherever they arise in the group;
- (b) whether there are legal or regulatory requirements that restrict the transferability of assets to another insurance or reinsurance undertaking;



- (c) whether making those own funds available for covering the group Solvency Capital Requirement would not be possible within a maximum of 9 months;
  - (d) whether, where method 2 is used, the own-fund item does not satisfy the requirements set out in Articles 71, 73 and 77; for this purpose, the term “Solvency Capital Requirement” in those Articles shall include both the Solvency Capital Requirement of the related undertaking that has issued the own fund item and the group Solvency Capital Requirement.’;
10. in Article 375, paragraph 2 is replaced by the following:
2. Participating insurance and reinsurance undertakings, insurance holding companies or mixed financial holding companies shall submit to the group supervisor the information referred to in paragraph 1 no later than **26** weeks after the reference date of the opening financial statement as referred to in Article 314(1)(a).’;
11. Annex XVII to Delegated Regulation (EU) 2015/35 is corrected in accordance with Annex I to this Regulation;
12. Annex XVIII to Delegated Regulation (EU) 2015/35 is corrected in accordance with Annex II to this Regulation;
13. Annex XXI to Delegated Regulation (EU) 2015/35 is corrected in accordance with Annex III to this Regulation.

### *Article 3*

This Regulation shall enter into force on the 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,

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*