

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION) (AMENDMENT ETC.) (EU EXIT) (No. 3) INSTRUMENT 2020

Powers exercised

- A. The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

History

- B. Under the Regulations, the Bank and the Prudential Regulation Authority (“the PRA”) were made appropriate regulators for specified EU Regulations made under Directive 2014/59/EU listed in Part 3 and Part 4 respectively of the Schedule to the Regulations as they form part of domestic law by virtue of section 3 of the Act. On 9 April 2019, the Bank made the Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019 and the PRA made the Technical Standards (Bank Recovery and Resolution Directive) (EU Exit) (No.2) Instrument 2019. On 25 October 2019, Part 3 of the Schedule to the Regulations was amended by the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 to make the Bank the appropriate regulator for the additional specified EU Regulation, Commission Delegated Regulation (EU) 2019/348.

Pre-conditions to making

- C. The Bank is the appropriate regulator for the specified EU Regulations specified in Part 3 of the Schedule to the Regulations.
- D. The Bank has consulted the PRA and the Financial Conduct Authority (“the FCA”) in accordance with regulation 5 of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- F. In this instrument –
- (a) “the 2018 Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the 2020 Act” means the European Union (Withdrawal Agreement) Act 2020;
 - (c) “specified EU Regulations” has the meaning given in regulation 2(l) of the Regulations;
 - (d) “the Bank Recovery and Resolution BTS” means the specified EU Regulations made under Directive 2014/59/EU listed in Part 3 of the Schedule to the Regulations as they form part of domestic law by virtue of section 3 of the Act, excluding those listed in Annex J of the Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019;
 - (e) “IP completion day” has the meaning given in section 39 of the 2020 Act.
- G. The Bank makes the modifications specified in paragraphs 1.1.1 to 1.1.7 of Annex A to the Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019 to the specified EU Regulation listed in column (1) below.
- H. The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding specified EU Regulation listed in column (1) below.

(1)	(2)
Commission Delegated Regulation (EU) 2019/348	A

Commencement

I. This instrument comes into force immediately before IP completion day.

Citation

J. This instrument may be cited as the Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 3) Instrument 2020.

By order of the Bank of England

[•] 2020

Draft for consultation

Annex A

Simplified Obligations

1 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2019/348

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Regulation 2019/348 of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 1

Quantitative assessment for credit institutions

...

6. Where the total assets of a credit institution do not exceed 0,02% of the total assets of all credit institutions authorised and, where relevant data are available, of branches established in the ~~Member State, including Union branches~~ United Kingdom, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless that would not be justified on the basis of Article 2.

7. Where a credit institution has been identified as a G-SII or an O-SII under regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 ~~Article 131(1) of Directive 2013/36/EU~~ or classified as Category 1 on the basis of the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) issued in accordance with Article 107(3) of ~~that Directive 2013/36/EU~~, competent and resolution authorities may, without applying paragraphs 1 to 5 of this Article, establish that the failure of that credit institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. The relevant indicator values for those institutions shall, in any event, still be taken into account for determining the aggregate amount referred to in point 2 of Annex I, and for determining the total assets of all credit institutions authorised in the ~~Member State~~ United Kingdom for the purpose of paragraph 6.

Article 2

Qualitative assessment for credit institutions

1. Where, pursuant to Article 1, a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions, competent and resolution authorities shall assess the impact of that credit institution's failure on financial markets, other institutions

or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

- (a) the extent to which the credit institution performs critical functions in ~~one or more~~ Member States the United Kingdom;
- (b) whether the credit institution's covered deposits would exceed the mandatory contributions available ~~financial means of the relevant to the UK~~ deposit guarantee scheme and the deposit guarantee scheme's capacity to raise extraordinary *ex post* contributions, as referred to in the Depositor Protection Part of the PRA Rulebook Article 10 of Directive 2014/49/EU of the European Parliament and of the Council⁷;
- ...
- (d) ~~whether the credit institution that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~
- (e) ~~whether the credit institution is affiliated to a central body, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among affiliated institutions would constitute a substantive impediment to normal insolvency proceedings.~~
- ...

4. In this Article, “mandatory contributions” has the meaning given in rules made by the PRA under the Financial Services & Markets Act 2000.

Article 3

Quantitative assessment for investment firms

5. Where an investment firm has been identified as a G-SII or an O-SII in accordance with regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 Article 131(1) of Directive 2013/36/EU or has been classified as Category 1 on the basis of the guidelines on common procedures and methodologies for SREP issued in accordance with Article 107(3) of ~~that~~ Directive 2013/36/EU, competent and resolution authorities may, without applying paragraphs 1 to 4 of this Article, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Article 4

Qualitative assessment for investment firms

1. Where an investment firm is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions and funding conditions pursuant to Article 3, competent and resolution authorities shall assess the impact of that investment firm's failure on financial markets, other institutions or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

(a) the extent to which the investment firm performs critical functions in ~~one or more Member States~~ the United Kingdom;

....

~~(c) whether an investment firm that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~

...

~~(e) the extent to which money and financial instruments held by the investment firm on its clients' behalf would not be fully protected by an investor compensation scheme section 5.5 of the Compensation Sourcebook of the FCA Handbook as referred to in Directive 97/9/EC of the European Parliament and of the Council⁸;~~

Article 5

Institutions belonging to groups

1. For an institution that is part of a group, the assessments referred to in Articles 1 to 4 shall be made at the level of the parent undertaking in the United Kingdom ~~Member State where the institution has been authorised~~.

2. By way derogation from paragraph 1, for an institution that is part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU~~, the assessments referred to in Articles 1 to 4 of this Regulation shall be made at the following levels:

(a) the level of the UK ~~Union~~ parent undertaking;

(b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

3. Institutions that are part of a group subject to consolidated supervision pursuant to ~~Articles 111 and 112 of Directive 2013/36/EU~~ Part 6 of the Capital Requirements Regulations 2013 shall be regarded as institutions the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding

conditions, where any of the following apply at any of the levels referred to in points (a) and (b) of paragraph 2 of this Article:

...

4. Paragraphs 2 and 3 shall not apply to institutions that are subject to a recovery plan as referred to in ~~Articles 8(2)(b) of Directive 2014/59/EU~~ sub-paragraph (d) of the definition of “relevant matters” in Article 16(2) of the Bank Recovery and Resolution (No 2) Order 2014.

5. Competent and resolution authorities shall coordinate the assessments referred to in this Article ~~and exchange all necessary information within the framework of supervisory and resolution colleges.~~

Article 6

Assessment of promotional banks

Competent and resolution authorities may regard promotional banks, ~~as defined in Article 3(27) of Commission Delegated Regulation (EU) No 2015/63⁹~~ meaning any undertaking or entity set up by the United Kingdom’s a Member State, central or regional government, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government’s public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or the promotional loan it grants is directly or indirectly guaranteed by the United Kingdom’s Member State’s central or regional government, as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without applying paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

(a) the level of the ~~UK Union~~ parent undertaking;

(b) the level of each parent undertaking in the United Kingdom a Member State or, where there is no parent undertaking in the United Kingdom a Member State, the level of each stand-alone subsidiary of the group in the United Kingdom a Member State.

Article 7

Assessment of credit institutions subject to an orderly winding-up process

Competent and resolution authorities may regard credit institutions that are subject to an orderly winding-up process as institutions the failure of which is not likely to have a significant negative effect on financial markets, other institutions or funding conditions, without the application of paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the UK ~~Union~~-parent undertaking;
- (b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

Article 8

Assessment by competent and resolution authorities from the same Member State

Taking into account different purposes of recovery and resolution planning, competent and resolution authorities ~~from the same Member State~~ may reach different conclusions with regard to the application of Articles 1 to 4, 6 and 7, in which case they shall regularly assess whether those different conclusions remain justified.

...

ANNEX 1

Table 1

Indicators and weights for calculating the total quantitative score for credit institutions

Criterion	Indicator for credit institutions	Weight
Size	Total assets	25%
Interconnected-ness	Intra-financial system liabilities	8,33%
	Intra-financial system assets	8,33%
	Debt securities outstanding	8,33%
Scope and complexity of activities	Value of over-the-counter (OTC) derivatives (notional)	8,33%
	Cross-jurisdictional liabilities	8,33%
	Cross-jurisdictional claims	8,33%
Nature of business	Private sector deposits from depositors in the <u>EU</u> UK	8,33%
	Private sector loans to recipients in the <u>EU</u> UK	8,33%
	Value of domestic payments	8,33%

1.

- 2. The indicator value for each credit institution shall be divided by the aggregate amount of the corresponding indicator value for all credit institutions authorised in the United Kingdom ~~the Member State~~ and, where the relevant data are available, branches established in the United Kingdom ~~the Member State~~ ~~concerned including Union branches established in that Member State~~.

...

ANNEX 3
Table 3
Specifications of indicators

Indicator	Scope	Specifications
...
Value of domestic payment transactions	Worldwide	<p>Payments made in the reporting year (excluding intra-group payments): this indicator is calculated as the value of a bank's payments sent through all of the main payment systems of which it is a member.</p> <p>Report the total gross value of all cash payments sent by the relevant entity via large-value payment systems and the gross value of all cash payments sent through an agent bank (e.g. using a correspondent or nostro account) over the reporting year in each indicated currency. All payments sent via an agent bank should be reported, regardless of how the agent bank actually settles the transaction. Do not include intra-group transactions (i.e. transactions processed within or between entities in the same group as the relevant entity). If precise totals are unavailable, known overestimates may be reported.</p> <p>Payments should be reported regardless of the purpose, location or settlement method. This includes, but is not limited to, cash payments associated with derivatives, securities financing transactions and foreign exchange transactions. Do not include the value of any non-cash items settled in connection with these transactions. Include cash payments made on behalf of the reporting entity as well as those made on behalf of customers (including financial institutions and other commercial customers). Do not include payments made through retail payment systems.</p> <p>Include only outgoing payments (i.e. exclude payments received). Include the amount of payments made via Continuous Linked Settlement (CLS). Other than CLS payments, do not net any outgoing wholesale payment values, even if the transaction was settled on a net basis (i.e. all wholesale payments made via large-value payment systems or through an agent must be reported on a gross basis). Retail payments sent via large-value payment systems or through an agent may be reported on a net basis.</p> <p>Please report values in euros, using the official rate specified at http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm (for monthly rates) or http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html (for daily rates).</p>