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COMMISSION IMPLEMENTING DECISION (EU) .../...

of **XXX**

on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING DECISION (EU) .../...

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on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹, and in particular Article 107(4), 114(7), 115(4), 116(5), 142(2) and 391, second paragraph, thereof,

Whereas:

- (1) Institutions are to fulfil capital requirements in a way that adequately reflects the risks undertaken by those institutions, including credit risk, having regard to the different geographical contexts in which they operate. The credit risk incurred by institutions attached to exposures to entities located outside the Union is determined, all other factors being equal, by the quality of the relevant regulatory framework and supervision applied to those entities in the relevant third country.
- (2) Institutions also are to limit their exposures to individual clients to avoid being exposed to excessive concentration risk. When calculating their exposures to individual clients, institutions may be allowed to exclude certain types of exposures to institutions from that calculation. However, when clients are located outside the Union, whether they can be treated as institutions depends also on the quality of the relevant regulatory framework and supervision applied to those entities in the relevant third country.
- (3) Regulation (EU) 876/2019 of the European Parliament and of the Council², introduced, *inter alia*, in Article 391 of Regulation (EU) No 575/2013, a provision empowering the Commission to adopt implementing decisions as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union, for the purpose of determining the treatment of exposures under Part Four of Regulation (EU) No 575/2013. A list of third countries and territories the prudential supervisory and regulatory requirements of which are considered equivalent to those applied in the Union for the purposes of Article 391 of that Regulation should therefore be established. For the sake of legal certainty and

¹ OJ L 176, 27.6.2013, p. 1.

² Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

consistency, it is necessary to include all the provisions on the equivalence of the supervisory and regulatory requirements of third countries and territories for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013 into a single Decision. It is therefore necessary to repeal and replace Commission Implementing Decision (EU) 908/2014³.

- (4) Article 107(3) of Regulation (EU) No 575/2013 allows institutions to treat exposures to third country investment firms, credit institutions and exchanges as exposures to institutions only if the third country applies prudential and supervisory requirements to the entity concerned which are at least equivalent to those applied in the Union.
- (5) Articles 114(7), 115(4) and 116(5) of Regulation (EU) No 575/2013 set specific risk weights applicable to exposures to central governments, central banks, regional governments, local authorities, and public sector entities located in third countries that apply supervisory and regulatory arrangements at least equivalent to those applied in the Union.
- (6) Article 153 of Regulation (EU) No 575/2013 lays down the formula for the calculation of the risk weighted exposures amounts for exposures to corporates, institutions, central governments and central banks under the internal-ratings based (IRB) approach and specifies the parameters to be used for that calculation, including the coefficient of correlation. Article 153(2) of Regulation (EU) No 575/2013 sets the coefficient of correlation applicable to large financial sector entities. Pursuant to Article 142(1), point (4)(b), of that Regulation, in order to qualify for the definition of ‘large financial sector entity’, the financial sector entity or one of its subsidiaries is to be subject to the laws of a third country applying prudential supervisory requirements at least equivalent to those applied in the Union.
- (7) Article 391 of Regulation (EU) No 575/2013 allows institutions established in the Union to treat an exposure to a private or public undertaking of a third country as an exposure to an institution for the purposes of Part Four of that Regulation, provided that the undertaking would be considered an ‘institution’ as defined in Article 4(1), point (3), of that Regulation, if it were established in the Union, and provided that it has been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.
- (8) In order to determine the appropriate risk-weighted exposures for the calculation of capital requirements for the credit risk attached to exposures to certain categories of entities located in third countries, as well as the appropriate treatment of counterparties for the purposes of Part Four of Regulation (EU) No 575/2013, the Commission has assessed the equivalence of the supervisory and regulatory arrangements of third countries to the corresponding supervisory and regulatory arrangements in the Union.
- (9) The equivalence has been determined by an outcome-based analysis of the third country's prudential, regulatory and supervisory arrangements which tests their ability to achieve the same general objectives as those of the Union's prudential, supervisory and regulatory arrangements. Those objectives refer in particular to the stability and integrity of both the domestic and the global financial system in its entirety; the effectiveness and adequacy of protection of depositors and other consumers of financial services; the cooperation between different actors of the financial system,

³ Commission Implementing Decision 2014/908/EU of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 359, 16.12.2014, p. 155).

including regulators and supervisors; the independence and the effectiveness of supervision; and the effective implementation and enforcement of relevant internationally agreed standards. In order to achieve the same general objectives as those of the Union's prudential, supervisory and regulatory arrangements, the prudential, supervisory and regulatory arrangements of the third country should comply with a series of operational, organisational and supervisory standards reflecting the essential elements of the Union's supervisory and regulatory requirements applicable to relevant categories of financial institutions.

- (10) For the purposes of Articles 114, 115, and 116 of Regulation (EU) No 575/2013 equivalence should be determined by reference to the supervisory and regulatory arrangements applicable to credit institutions since these arrangements usually set the risk weights for the calculation of capital requirements for credit risk.
- (11) For the purposes of Article 142 of Regulation (EU) No 575/2013, equivalence should be confined to the supervisory and regulatory arrangements applicable to third country undertakings with a main business comparable to that of a credit institution or an investment firm, in accordance with the definitions in Article 4(1), point (27), of that Regulation, and taking into account the definition in Article 4(1), point (3) thereof.
- (12) For the purposes of Article 391 of Regulation (EU) No 575/2013, equivalence should be confined to the supervisory and regulatory arrangements applicable to third country undertakings with a main business comparable to that of a credit institution or an investment firm in accordance with the definition in Article 4(1), point (3), of that Regulation.
- (13) Taking into account independent assessments by the international organisations, such as those carried out by the Basel Committee on Banking Supervision, the International Monetary Fund and the International Organization of Securities Commissions, the Commission has assessed the supervisory and regulatory arrangements of certain third countries applicable to credit institutions, investment firms, and exchanges. This analysis has enabled the Commission to adopt Implementing Decision (EU) 908/2014 laying down an initial list of third countries and territories considered to be equivalent in terms of supervisory and regulatory arrangements, for the purposes of determining the treatment of the relevant categories of exposures referred to in Articles 107, 114, 115, 116 and 142 of Regulation (EU) No 575/2013.
- (14) The list of equivalent countries identified in the Implementing Decision (EU) 908/2014 was not intended to be either exhaustive, or definitive. On the basis of regular monitoring of the evolution of the supervisory and regulatory arrangements of third countries and territories in order to assess their equivalence to those of the Union, that Implementing Decision was subsequently amended by Commission Implementing Decisions (EU) 230/2016⁴, 2358/2016⁵, 536/2019⁶ and 2166/2019⁷. Those Decisions

⁴ Commission Implementing Decision (EU) 2016/230 of 17 February 2016 amending Implementing Decision 2014/908/EU as regards the lists of third countries and territories whose supervisory and regulatory requirements are considered equivalent for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 41, 18.02.2016, p. 23).

⁵ Commission Implementing Decision (EU) 2016/2358 of 20 December 2016 amending Implementing Decision 2014/908/EU as regards the lists of third countries and territories whose supervisory and regulatory requirements are considered equivalent for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 348, 21.12.2016, p. 75).

extended the lists of third countries and territories considered equivalent, taking into account available sources of information, including the assessment made by the international organisations, and later by the European Banking Authority (EBA).

- (15) Since the adoption of Implementing Decision (EU) 2166/2019, the Commission has continued monitoring relevant developments in the prudential, supervisory and regulatory frameworks of third countries, taking into account available sources of information, including assessments made by the EBA. As a result of one such assessment, the EBA recommended that the prudential, supervisory and regulatory frameworks applicable to credit institutions in Bosnia and Herzegovina and North Macedonia should be considered as equivalent to the Union legal framework for the purposes of Articles 107(4), 114(7), 115(4), 116(5), 142(2) and Article 391 of Regulation (EU) No 575/2013.
- (16) The Commission acknowledges that the assessment of the prudential, supervisory and regulatory framework applicable to institutions in Bosnia and Herzegovina and North Macedonia carried out by the EBA covered only credit institutions authorised under respective national law. This Decision should therefore not apply to other entities established in Bosnia and Herzegovina and North Macedonia.
- (17) Taking into account EBA's recommendation and based on its own assessment, the Commission has concluded that Bosnia and Herzegovina and North Macedonia have in place prudential, supervisory and regulatory arrangements which comply with a series of operational, organisational and supervisory standards reflecting the essential elements of the Union's prudential, supervisory and regulatory arrangements applicable to credit institutions. Therefore, it is appropriate to consider the prudential, supervisory and regulatory requirements applied to credit institutions located in Bosnia and Herzegovina and North Macedonia as at least equivalent to those applied in the Union for the purposes of Articles 107(4), 114(7), 115(4), 116(5), 142(2) and Article 391 of Regulation (EU) No 575/2013.
- (18) Bosnia and Herzegovina and North Macedonia should be therefore included in the relevant lists of third countries and territories whose prudential, supervisory and regulatory requirements and arrangements are considered equivalent to the Union's regime for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013.
- (19) Following the assessments carried out to date, the Commission has concluded that Argentina, Australia, Bosnia and Herzegovina, Brazil, Canada, China, Faroe Islands, Greenland, Guernsey, Hong Kong, India, Isle of Man, Japan, Jersey, Mexico, Monaco, New Zealand, North Macedonia, Saudi Arabia, Serbia, Singapore, South Africa, South Korea, Switzerland, Turkey and the USA have in place prudential, supervisory and regulatory arrangements which comply with a series of operational, organisational and supervisory standards reflecting the essential elements of the Union's prudential,

⁶ Commission Implementing Decision (EU) 2019/536 of 29 March 2019 amending Implementing Decision 2014/908/EU as regards the lists of third countries and territories whose supervisory and regulatory requirements are considered equivalent for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 92, 1.4.2019, p. 3).

⁷ Commission Implementing Decision (EU) 2019/2166 of 16 December 2019 amending Implementing Decision 2014/908/EU as regards the inclusion of Serbia and South Korea in the lists of third countries and territories whose supervisory and regulatory requirements are considered equivalent for the purposes of the treatment of exposures in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 328, 18.12.2019, p. 84).

supervisory and regulatory arrangements applicable to credit institutions. Therefore, it is appropriate to consider the prudential, supervisory and regulatory requirements applied to credit institutions located in these countries as at least equivalent to those applied in the Union for the purposes of Articles 107(4), 114(7), 115(4), 116(5), 142(2) and Article 391 of Regulation (EU) No 575/2013.

- (20) Following the assessments carried out to date, the Commission has concluded that Australia, Brazil, Canada, China, Hong Kong, Indonesia, Japan (limited to Type I Financial Instruments Business Operators), Mexico, South Korea, Saudi Arabia, Singapore, South Africa and the USA have in place supervisory and regulatory arrangements which comply with a series of operational, organisational and supervisory standards reflecting the essential elements of the Union's supervisory and regulatory arrangements applicable to investment firms. Therefore, it is appropriate to consider the supervisory and regulatory requirements applying to investment firms located in those third countries as at least equivalent to those applied in the Union for the purposes of Articles 107(4), 114(7), 115(4), 116(5), 142(2) and Article 391 of Regulation (EU) No 575/2013.
- (21) Following the assessments carried out to date, the Commission has concluded that Australia, Brazil, Canada, China, India, Indonesia, Japan, Mexico, South Korea, Saudi Arabia, Singapore, South Africa and the USA have in place supervisory and regulatory arrangements which comply with a series of operational standards reflecting the essential elements of the Union's supervisory and regulatory arrangements applicable to exchanges. Therefore, it is appropriate to consider the supervisory and regulatory requirements of those third countries applied to exchanges as at least equivalent to those applied in the Union for the purposes of Article 107(4) of Regulation (EU) No 575/2013 limited to exposures to exchanges located in those third countries.
- (22) The lists of third countries and territories considered to be equivalent for the purposes of the relevant provisions of Regulation (EU) No 575/2013 are not exhaustive. The Commission, with the assistance of the EBA, will continue to monitor on a regular basis the evolution of the supervisory and regulatory arrangements of third countries and territories with a view to updating, as appropriate and at least every five years, the lists of third countries and territories set out in this Decision taking account, in particular, of developments in supervisory and regulatory arrangements, in the Union and at global level, and in light of new available sources of relevant information.
- (23) The regular review of the prudential and supervisory requirements applicable in the third countries and territories listed in Annexes I to VI to this Decision should be without prejudice to the possibility for the Commission to undertake a specific review relating to an individual third country or territory at any time outside the general review, where relevant developments make it necessary for the Commission to re-assess the recognition granted by this Decision. Such re-assessment could lead to the withdrawal of the recognition of equivalence.
- (24) The measures provided for in this Decision are in accordance with the opinion of the European Banking Committee,

HAS ADOPTED THIS DECISION:

Article 1

Equivalence of requirements applied to credit institutions for the purposes of Article 107(4) of Regulation (EU) No 575/2013

For the purposes of Article 107(4) of Regulation (EU) No 575/2013, the third countries and territories listed in Annex I to this Decision shall be considered as applying supervisory and regulatory arrangements to credit institutions equivalent to those applied in the Union.

Article 2

Equivalence of requirements applied to investment firms for the purposes of Article 107(4) of Regulation (EU) No 575/2013

For the purposes of Article 107(4) of Regulation (EU) No 575/2013, the third countries listed in Annex II to this Decision shall be considered as applying supervisory and regulatory arrangements to investment firms equivalent to those applied in the Union.

Article 3

Equivalence of requirements applied to exchanges for the purposes of Article 107(4) of Regulation (EU) No 575/2013

For the purposes of Article 107(4) of Regulation (EU) No 575/2013, the third countries listed in Annex III to this Decision shall be considered as applying supervisory and regulatory arrangements to exchanges equivalent to those applied in the Union.

Article 4

Equivalence of requirements applied to exposures to central governments, central banks, regional governments, local authorities and public sector entities for the purposes of Articles 114, 115 and 116 of Regulation (EU) No 575/2013

For the purposes of Articles 114(7), 115(4) and 116(5) of Regulation (EU) No 575/2013, the third countries and territories listed in Annex IV to this Decision shall be considered as applying supervisory and regulatory arrangements equivalent to those applied to credit institutions in the Union.

Article 5

Equivalence of requirements to credit institutions and investment firms for the purposes Article 142 of Regulation (EU) No 575/2013

For the purposes of Article 142(2) of Regulation (EU) No 575/2013, the third countries and territories listed in Annex V to this Decision shall be considered as applying supervisory and regulatory arrangements equivalent to those applied in the Union.

Article 6

Equivalence of requirements applied to institutions for the purposes of Article 391 of Regulation (EU) No 575/2013

For the purposes of Article 391 of Regulation (EU) No 575/2013, the third countries and territories listed in Annex VI to this Decision shall be considered as applying supervisory and regulatory arrangements equivalent to those applied in the Union.

Article 7

Repeal

Decision 2014/908/EU is repealed. References to the repealed Decision shall be construed as references to this Decision and read in accordance with the correlation table in the Annex VII.

Article 8

Entry into force

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

Done at Brussels,

For the Commission
The President
Ursula von der Leyen

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