



STATUTORY INSTRUMENTS.

S.I. No. 202 of 2016



EUROPEAN UNION (BANK RECOVERY AND RESOLUTION)
RESOLUTION FUND LEVY REGULATIONS 2016

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I, PHILIP LANE, Governor of the Central Bank of Ireland (the “Bank”), in the exercise of the powers conferred on the Bank, as designated resolution authority, by Regulation 166 of the European Union (Bank Recovery and Resolution) Regulations 2015 (No. 289 of 2015) (the “Bank Recovery and Resolution Regulations”), after consultation with the Minister Finance in accordance with Regulation 199 thereof, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Bank Recovery and Resolution) Resolution Fund Levy Regulations 2016.

Interpretation

2. (1) In these Regulations—

“Act of 1942” means Central Bank Act 1942 (No. 22 of 1942);

“Bank” means Central Bank of Ireland;

“Bank and Investment Firm Resolution Fund” means the fund established pursuant to Regulation 163(1) of the Bank Recovery and Resolution Regulations;

“Bank Recovery and Resolution Regulations” means European Union (Bank Recovery and Resolution) Regulations 2015 (No. 289 of 2015);

“Commission Delegated Regulation” means Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements¹;

“Levy period” means calendar year;

“Limited Activity Investment Firms” means investment firms authorised in the State which fall within the definition of Article 96(1)(a) or (b) of Regulation (EU) No 575/2013 of the European Parliament and of the Council² or investment firms authorised in the State which carry out activity 8 of Annex I Section A of Directive 2004/39/EC of the European Parliament and of the Council³ but which do not carry out activities 3 or 6 of Annex I Section A of that Directive;

¹OJ L 11, 17.1.2015, p. 44

²OJ L 176, 27.6.2013, p. 1

³OJ L 145, 30.4.2004, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th April, 2016.*

“OTC Regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁴;

“SRM Regulation” means Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010⁵.

(2) In these Regulations, unless otherwise specified, the definitions contained in the Bank Recovery and Resolution Regulations and the Commission Delegated Regulation shall apply.

(3) These Regulations shall be read together with the Commission Delegated Regulation.

Application

3. (1) Every person who on 1 May 2016 is an institution within the meaning of Regulation 166 of the Bank Recovery and Resolution Regulations shall pay a levy in respect of the levy period 2016 to the Bank for the account of the Bank and Investment Firm Resolution Fund.

(2) Paragraph (1) does not apply to an institution that is an entity referred to in Article 2 of the SRM Regulation.

Basis for levies

4. For the purposes of the Bank Recovery and Resolution Regulations and the Commission Delegated Regulation, the following shall apply:

- (a) The annual target level for the Bank and Investment Firm Resolution Fund, for the levy period 2016, is €76,398,659;
- (b) The aggregate liabilities, excluding own funds and covered deposits, of all institutions within the meaning of Regulation 166 of the Bank Recovery and Resolution Regulations, for the levy period 2016, is €397,354,965,137.

Determination of additional risk indicators

5. For the levy period 2016, the additional risk indicators referred to in Article 6(5)(a) to (c) of the Commission Delegated Regulation shall be determined by the Bank in accordance with the Schedule to these Regulations.

Risk adjustment of levies in respect of Union branches and Limited Activity Investment Firms

6. (1) For the levy period 2016, each Union branch and Limited Activity Investment Firm shall pay €1,000 for each €9,000,000 of its total liabilities, less own funds and covered deposits.

⁴OJ L 201, 27.7.2012, p. 1

⁵OJ L 225, 30.7.2014, p. 1

- (2) For the purposes of calculating the total liabilities of each Union branch and Limited Activity Investment Firm, the following liabilities shall be excluded:
- (a) the intragroup liabilities arising from transactions entered into by a Union branch or Limited Activity Investment Firm with an institution, within the meaning of the Commission Delegated Regulation, which is part of the same group, provided that all the following conditions are met:
 - (i) each institution, Union branch or Limited Activity Investment Firm is established in the Union,
 - (ii) each institution, Union branch or Limited Activity Investment Firm is included in the same consolidated supervision in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013 on a full basis and is subject to an appropriate centralised risk evaluation, measurement and control procedures, and
 - (iii) there is no current or foreseen material practical or legal impediment to the prompt repayment of the liability when due;
 - (b) the liabilities created by a Union branch or Limited Activity Investment Firm, which is member of an IPS as referred to in point (8) of Article 2(1) of Directive 2014/59/EU of the European Parliament and of the Council⁶ and which has been allowed by the competent authority to apply Article 113(7) of Regulation (EU) No 575/2013, through an agreement entered into with an institution, within the meaning of the Commission Delegated Regulation, which is member of the same IPS;
 - (c) in the case of a central counterparty established in a Member State having availed itself of the option in Article 14(5) of the OTC Regulation, liabilities related to clearing activities as defined in Article 2(3) of the OTC Regulation, including those arising from any measures the central counterparty takes to meet margin requirements, to set up a default fund and to maintain sufficient pre-funded financial resources to cover potential losses as part of the default waterfall in accordance with the OTC Regulation, as well as to invest its financial resources in accordance with Article 47 of the OTC Regulation;
 - (d) in the case of a central securities depository, the liabilities related to the activities of a central securities depository, including liabilities to participants or service providers of the central securities depository with a maturity of less than seven days arising from activities for which it has obtained an authorisation to provide banking-type ancillary services in accordance with Title IV of Regulation (EU) No 909/2014 of the European Parliament and of the Council⁷, but excluding other liabilities arising from such banking-type activities;

⁶OJ L 173, 12.6.2014, p. 190

⁷OJ L 257, 28.8.2014, p. 1

- (e) in the case of investment firms, the liabilities that arise by virtue of holding client assets or client money including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council⁸ or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council⁹, provided that such a client is protected under the applicable insolvency law;
- (f) in case of a Union branch or Limited Activity Investment Firm operating promotional loans, the liabilities of the intermediary institution towards the originating or another promotional bank or another intermediary institution and the liabilities of the original promotional bank towards its funding parties in so far as the amount of these liabilities is matched by the promotional loans of that institution.

(3) The liabilities referred to in paragraph (2)(a) and (b) shall be evenly deducted on a transaction by transaction basis from the amount of total liabilities of the Union branches or Limited Activity Investment Firms which are parties of the transactions or agreements referred to in paragraph (2)(a) and (b).

(4) For the purpose of this Regulation, the yearly average amount, calculated on a quarterly basis, of liabilities referred to in paragraph (1) arising from derivative contracts shall be valued in accordance with Article 429(6) and (7) of Regulation (EU) No 575/2013.

(5) The value assigned to liabilities arising from derivative contracts may not be less than 75 % of the value of the same liabilities resulting from the application of the accounting provisions applicable to the Union branch or Limited Activity concerned for the purposes of financial reporting.

(6) If, under national accounting standards applying to a Union branch or Limited Activity Investment Firm, there is no accounting measure of exposure for certain derivative instruments because they are held off-balance sheet, the Union branch or Limited Activity Investment Firm concerned shall report to the Bank the sum of positive fair values of those derivatives as the replacement cost and add them to its on-balance sheet accounting values.

(7) For the purpose of this Regulation, the total liabilities referred to in paragraph (1) shall exclude the accounting value of liabilities arising from derivative contracts and include the corresponding value determined in accordance with paragraphs (4) to (6).

(8) For verifying whether all conditions and requirements referred to in paragraphs (2) to (7) are met, the Bank shall be based on the relevant assessments conducted by competent authorities that are made available in accordance with Article 90 of Directive 2014/59/EU.

⁸OJ L 302, 17.11.2009, p. 32

⁹OJ L 174, 1.7.2011, p. 1

Reporting Obligations of Union Branches and Limited Activity Investment Firms

7. (1) Union branches and Limited Activity Investment Firms shall provide the Bank with the latest approved annual financial statements available before 31 December of the year preceding the levy period, together with the opinion submitted by the statutory auditor or audit firm, in accordance with Article 32 of Directive 2013/34/EU of the European Parliament and of the Council¹⁰.

(2) Union branches and Limited Activity Investment Firms shall provide the Bank at least with the following information at individual entity level:

- (a) Total Assets;
- (b) Total Liabilities;
- (c) Liabilities covered by Regulation 6(2)(a) to (f);
- (d) Liabilities arising from derivatives contracts;
- (e) Liabilities arising from derivatives contracts valued in accordance with Regulation 6(4) to (6);
- (f) Covered deposits;
- (g) Own funds.

(3) The information in paragraph (2), included in the supervisory reporting requirements laid down by Commission Implementing Regulation (EU) No 680/2014¹¹ or, where applicable, by any other supervisory reporting requirement applicable to the Union branch or Limited Activity Investment Firm under national law (including under any enactment or rule of law), shall be provided to the Bank as reported by that Union branch or Limited Activity Investment Firm in the latest relevant supervisory report submitted to the competent authority pertaining to the reference year of the annual financial statement referred to in paragraph (1).

(4) The information referred to in paragraphs (1) to (3) shall be provided—

- (a) at the latest by 31 January each year in respect of the year ended on 31 December of the preceding year, or of the applicable relevant financial year, or
- (b) if 31 January is not a business day, on the following business day.

(5) Where the information or data submitted to the Bank is subject to updates or corrections, such updates or corrections shall be submitted to the Bank without undue delay.

(6) Union branches and Limited Activity Investment Firms shall submit the information referred to in paragraph (2) in the data formats and representations specified by the Bank.

¹⁰OJ L 182, 29.6.2013, p. 19

¹¹OJ L 191, 28.6.2014, p. 1

(7) Where Union branches and Limited Activity Investment Firms do not submit all the information referred to in paragraphs (1) to (6) within the time-frame foreseen in those paragraphs, the Bank shall use estimates or its own assumptions in order to calculate the levy of the Union branch or Limited Activity Investment Firm concerned.

(8) Where the information submitted by a Union branch or Limited Activity Investment Firm to the Bank is subject to restatements or revisions, the Bank shall adjust the levy in accordance with the updated information upon the calculation of the levy of that Union branch or Limited Activity Investment Firm for the following levy period.

(9) Any difference between the levy calculated and paid on the basis of the information subject to restatements or revision and the levy which should have been paid following the adjustment of the levy shall be settled in the amount of the levy due for the following levy period.

(10) The adjustment referred to in paragraph (9) shall be made by decreasing or increasing the levies to the following levy period.

Process for raising levies in respect of Union branches and Limited Activity Investment Firms

8. (1) The date by which the Bank shall notify each Union branch and Limited Activity Investment Firm of its decision determining the levy to be paid by them for the levy period 2016 shall be 1 May 2016.

(2) The Bank shall notify the decision made in respect of each Union branch and Limited Activity Investment Firm in any of the following ways:

(a) electronically or by other comparable means of communication allowing for an acknowledgment of receipt;

(b) by registered mail with a form of acknowledgment of receipt.

(3) The decision made in respect of each Union branch and Limited Activity Investment Firm shall specify—

(a) the condition and the means by which the levy shall be paid, and

(b) the share of irrevocable payment commitments referred to in Article 103 of Directive 2014/59/EU that each Union branch or Limited Activity Investment Firm can use.

(4) For the purposes of paragraph (3), the Bank shall accept collateral only of the kind and under conditions that allow for swift realisability, including in the event of a resolution decision over the weekend, and the collateral should be conservatively valued to reflect significantly deteriorated market conditions.

(5) The date by which each Limited Activity Investment Firm and Union branch is liable to pay the levy for the levy period 2016 shall be 15 June 2016.

(6) Without prejudice to any other remedy available to the Bank, in the event of partial payment, non-payment or non-compliance with the requirement set out in the decision made in respect of each Union branch and Limited Activity Investment Firm, the Union branch or Limited Activity Firm concerned shall incur a daily penalty on the outstanding amount of the instalment.

(7) The daily penalty interest shall accrue on a daily basis on the amount due at an interest rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the payment deadline falls increased by 8 percentage points from the date on which the instalment was due.

Service of notice on institutions

9. Regulation 195 of the Bank Recovery and Resolution Regulations shall apply in respect of service of a notice or other document by the Bank for the purposes of these Regulations and the Commission Delegated Regulation.

Newly supervised Union branches and Limited Activity Investment Firms

10. (1) Where a Union branch or Limited Activity Investment Firm is a newly supervised institution for only part of the levy period 2016, the partial levy shall be determined by applying the methodology set out in Regulation 6(1) to the amount of its levy calculated during the subsequent levy period, by reference to the number of full months of the levy period 2016 for which that Limited Activity Investment Firm or Union branch is supervised.

(2) Where a Union branch or Limited Activity Investment Firm is a newly supervised institution for only part of the levy period 2016, its partial levy shall be collected together with the levy due for the subsequent levy period.

Provision of evidence concerning lump sum amounts

11. (1) Where an institution to which the Commission Delegated Regulation applies intends to provide evidence that the lump sum amount referred to in Article 10(1) to (6) of the Commission Delegated Regulation is higher than the levy calculated in accordance with Article 5 of the Commission Delegated Regulation, the institution shall provide such evidence to the Bank within 21 days of receipt of the levy notice.

(2) Paragraph (1) does not apply to an institution that is an entity referred to in Article 2 of the SRM Regulation.

SCHEDULE

DETERMINATION OF ADDITIONAL RISK INDICATORS

Calculation of “Trading activities, off-balance sheet exposures, derivatives, complexity and resolvability”

For the purposes of determining the risk indicator referred to in Article 6(5)(a) of the Commission Delegated Regulation, the following sub-indicators shall be determined:

- (a) Trading Ratio (Assets);
- (b) Trading Ratio (Common Equity Tier 1 Capital);
- (c) Trading Ratio (Total Risk Exposure);
- (d) Derivatives Ratio (Assets);
- (e) Derivatives Ratio (Common Equity Tier 1 Capital);
- (f) Derivatives Ratio (Total Risk Exposure);
- (g) Off Balance Sheet Exposure Ratio (Assets);
- (h) Off Balance Sheet Exposure Ratio (Common Equity Tier 1 Capital);
- (i) Off Balance Sheet Exposure Ratio (Total Risk Exposure).

Sub-indicator (a) “Trading Ratio (Assets)” shall consist of the following calculation:

$$\left(\frac{\text{Risk exposure amount for market risk on traded debt instruments and equity}}{\text{Total assets}} \right)$$

Sub-indicator (b) “Trading Ratio (Common Equity Tier 1 Capital)” shall consist of the following calculation:

$$\left(\frac{\text{Risk exposure amount for market risk on traded debt instruments and equity}}{\text{Common Equity Tier 1 Capital}} \right)$$

Sub-indicator (c) “Trading Ratio (Total Risk Exposure)” shall consist of the following calculation:

$$\left(\frac{\text{Risk exposure amount for market risk on traded debt instruments and equity}}{\text{Total Risk Exposure}} \right)$$

Where, for the purposes of each of sub-indicators (a), (b) and (c):
 “Risk exposure amount for market risk on traded debt instruments and equity” shall mean an amount calculated in accordance with Articles 92(3)(b)(i) and 92(4)(b) of Regulation (EU) No 575/2013, as

this amount is stated in the applicable supervisory reporting requirements of the institution concerned.

Where, for the purposes of sub-indicator (b):

“Common Equity Tier 1 Capital” is as referred to in Article 50 of Regulation (EU) No 575/2013 and as determined for the purpose of Template 1/CA1 of Annex I to Commission Implementing Regulation (EU) No 680/2014.

Sub-indicator (d) “Derivatives Ratio (Assets)” shall consist of the following calculation:

$$\left(\frac{\text{Derivatives exposures — Derivatives cleared with a Central Counterparty}}{\text{Total assets}} \right)$$

Sub-indicator (e) “Derivatives Ratio (Common Equity Tier 1 Capital)” shall consist of the following calculation:

$$\left(\frac{\text{Derivatives exposures — Derivatives cleared with a Central Counterparty}}{\text{Common Equity Tier 1 Capital}} \right)$$

Sub-indicator (f) “Derivatives Ratio (Total Risk Exposure)” shall consist of the following calculation:

$$\left(\frac{\text{Derivatives exposures — Derivatives cleared with a Central Counterparty}}{\text{Total Risk Exposure}} \right)$$

Where, for the purposes of each of sub-indicators (d), (e) and (f):

“Central Counterparty” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer, and that is established in a Member State having availed itself of the option in Article 14(5) of the OTC Regulation.

Sub-indicator (g) “Off Balance Sheet Exposure Ratio (Assets)” shall consist of the following calculation:

$$\left(\frac{\text{Total Off Balance Sheet Nominal Amount}}{\text{Total Assets}} \right)$$

Sub-indicator (h) “Off Balance Sheet Exposure Ratio (Common Equity Tier 1 Capital)” shall consist of the following calculation:

$$\left(\frac{\text{Total Off Balance Sheet Nominal Amount}}{\text{Common Equity Tier 1 Capital}} \right)$$

Sub-indicator (i) “Off Balance Sheet Exposure Ratio (Total Risk Exposure)” shall consist of the following calculation:

$$\left(\frac{\text{Total Off Balance Sheet Nominal Amount}}{\text{Total Risk Exposure}} \right)$$

Where, for the purposes of each of sub-indicators (g), (h) and (i):

“Total Off Balance Sheet Nominal Amount” means the amount as stated in the applicable supervisory reporting requirements of the institution concerned.

Where, for the purposes of each of sub-indicators (e) and (h):

“Common Equity Tier 1 Capital” is as referred to in Article 50 of Regulation (EU) No 575/2013 and as determined for the purpose of Template 1/CA1 of Annex I to Commission Implementing Regulation (EU) No 680/2014.

The Bank shall apply the following signs to the sub-indicators:

Sub-indicator	Sign
Trading Ratio (Assets)	“+”
Trading Ratio (Common Equity Tier 1 Capital)	“+”
Trading Ratio (Total Risk Exposure)	“+”
Derivatives Ratio (Assets)	“+”
Derivatives Ratio (Common Equity Tier 1 Capital)	“+”
Derivatives Ratio (Total Risk Exposure)	“+”
Off Balance Sheet Exposure Ratio (Assets)	“+”
Off Balance Sheet Exposure Ratio (Common Equity Tier 1 Capital)	“+”
Off Balance Sheet Exposure Ratio (Total Risk Exposure)	“+”

Each sub-indicator shall have an equal weight.

Calculation of “Membership in an Institutional Protection Scheme”

For the purposes of determining the risk indicator referred to in Article 6(5)(b) of the Commission Delegated Regulation, it shall be determined whether the institution is a member of an Institutional Protection Scheme. The maximum value of the range referred to in Step 3 of Annex I of the Commission Delegated Regulation shall be taken for any institution that is a member of an Institutional Protection Scheme. The minimum value of the range referred to in Step 3 of Annex I of the Commission Delegated Regulation shall be taken for all other institutions.

Calculation of “Extent of previous extraordinary public financial support”

For the purposes of determining the risk indicator referred to in Article 6(5)(c) of the Commission Delegated Regulation, the methodology referred to in Article 6(8) of the Commission Delegated Regulation shall apply.

Signed for and on behalf of the CENTRAL BANK OF IRELAND,
21 April 2016.

PHILIP LANE,
Governor of the Central Bank of Ireland.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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