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EBA/Op/2023/02

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# Opinion of the European Banking Authority on the application of the provisions relating to the boundary between trading book and banking book, and on the internal risk transfer between books as referred to in Article 3(6) of Regulation (EU) No 2019/876

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## Introduction and legal basis

1. In accordance with Article 325 of Regulation (EU) No 575/2013<sup>1</sup>, institutions are required to:
  - a. Calculate the own funds requirements for market risk with the approaches set out in paragraph 1 of that Article, and
  - b. Calculate, for reporting purposes only, the own funds for market risk with the new approaches set out in paragraph 3 of that Article<sup>2</sup>.
2. Recital (41) of Regulation (EU) No 2019/876<sup>3</sup> clarifies that the reporting requirements under the new approaches are meant to be a first step towards the full implementation of the fundamental review of the trading book (FRTB) framework in the Union, to be achieved by means of a legislative proposal of the Commission submitted by June 2020.
3. Article 3(6) of Regulation (EU) No 2019/876 provides that Article 1, point (53), as regards Article 104a of Regulation (EU) No 575/2013, and points (55) and (69), of that Regulation, containing some amendments to Regulation (EU) No 575/2013 aimed at modifying the provisions on the boundary between the trading and non-trading books of institutions (the

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<sup>1</sup> 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 648/2012 ([OJ L 176, 27.6.2013, p. 1](#)).

<sup>2</sup> Some institutions may be exempted from these reporting requirements in accordance with Article 325a of Regulation (EU) No 575/2013.

<sup>3</sup> 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).

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‘boundary framework’), in view of the introduction of the new own funds requirements for market risk in accordance with the FRTB, are applicable from 28 June 2023. That date has been set on the assumption that, by that date of application, the legislative procedure fully implementing the FRTB would be completed, and thus the amendments to the boundary framework would apply for capital calculation purposes.

4. On 27 October 2021, the Commission submitted its legislative proposal<sup>4</sup> to the European Parliament and to the Council to fully implement the FRTB framework also for capital purposes (as opposed to a mere reporting requirement). The legislative procedure is still ongoing.
5. While the amendments referred to in paragraph 3 are designed to be applied in the context of “*new own funds requirements for market risk*”, at the current state of the legislation, the application of those amendments would not just affect the new FRTB-inspired approaches, i.e. those set out in Article 325(3) of Regulation (EU) No 575/2013 for the purpose of the additional reporting. As a matter of fact, their application would require institutions to apply, as of June 2023, the provisions referred to in Article 3(6) of Regulation (EU) No 2019/876 also when calculating their own funds requirements under the current approaches set out in Article 325(1) of Regulation (EU) No 575/2013, which are not in line with the FRTB.
6. Therefore, the application of the provisions referred to in Article 3(6) of Regulation (EU) No 2019/876 as of June 2023 may be deemed inconsistent with the state of the implementation of the FRTB in the Union legislation. In fact, the early application of the new boundary regime before the full implementation of the FRTB can be considered directly in contrast with the letter of Article 3(6) of Regulation (EU) No 2019/876, which expressly aims at regulating the entry into force of “*provisions on the introduction of the new own funds requirements for market risk*”, and also with its teleological interpretation, in light of the rationale and timeline clearly outlined in Recital (41) of that Regulation. In addition, the frontloading of some provisions of the new boundary regime – instead of a coherent, thorough application of all those provisions simultaneously – can significantly affect market confidence and the orderly functioning and integrity of financial markets, as the new regime will interfere with the application of the current approaches set out in Article 325(1) of Regulation (EU) No 575/2013 for calculating market risk capital requirements, which are not yet aligned with the FRTB, and will ultimately generate uncertainty on how institutions’ disclosures are to be read.
7. The EBA’s competence to deliver this Opinion in the form of a non-action letter is based on Article 9c of Regulation (EU) No 1093/2010<sup>5</sup>, which provides that the EBA may issue non-action letters, if it considers that the application of one of the relevant legislative acts is

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<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0664>

<sup>5</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

liable to raise significant issues, as provisions contained in such act may directly conflict with another relevant act, and if it has received relevant information and considers on the basis of that information that the application of the relevant provisions raises significant exceptional issues pertaining to market confidence, consumer, customer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, or the stability of the whole or part of the financial system in the Union.

8. In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors<sup>6</sup>, the Board of Supervisors has adopted this Opinion which is addressed to the Commission and to the competent authorities referred to in Article 4(2), points (i) and (viii), of Regulation (EU) No 1093/2010.

## Description of the issue

9. The front-loaded application of the requirements set out in Article 3(6) of Regulation (EU) No 2019/876 compared to the rest of the FRTB framework, which is not yet implemented in the Union for capital purposes, creates several significant operational issues:
  - First, institutions would be subject to an operationally complex and fragmented two-step implementation of the boundary framework.
  - Second, they would be subject to an operationally burdensome and costly fragmented application of the rules for the reclassification of positions and internal-risk transfer between the trading and non-trading books.
  - Third, there are no jurisdictions at global level that envisaged such a two-step implementation of the boundary and internal-risk transfer frameworks. This would de-facto lead global institutions to be subject to very different regulatory requirements depending on where the risk management is performed, leading to fragmentation in the regulatory framework and, hence, in the financial markets, as well as potential unlevel playing field issues.
10. The Council recently agreed on its position on the implementation of Basel III reforms. In its general approach<sup>7</sup>, the Council would amend the application date of the provisions included in Article 3(6) of Regulation (EU) No 2019/876 to 1 January 2025 (see Article 3(3) of the General Approach agreed by the Council), so as to align the application of the boundary framework to the entry into force of the implementation of the FRTB for capital purposes. The European Parliament has confirmed an equal stance on this matter during its vote in the Economic and Monetary Affairs Committee on 24 January.<sup>8</sup> With their

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<sup>6</sup> Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

<sup>7</sup> <https://data.consilium.europa.eu/doc/document/ST-13772-2022-INIT/en/pdf>

<sup>8</sup> Voting results: [https://www.europarl.europa.eu/cmsdata/263203/RCVs\\_points%2009%20to%2013%20inc.pdf](https://www.europarl.europa.eu/cmsdata/263203/RCVs_points%2009%20to%2013%20inc.pdf)

negotiation positions aligned, both legislators agree that the two-step approach currently entailed by Article 3(6) of Regulation (EU) No 2019/876 should be avoided.

## Specific proposals

11. In these circumstances, a legislative proposal to provide the necessary legal certainty and postpone the entry into force of the provisions referred to in Article 3(6) of Regulation 2019/876 should be introduced by the Commission, under an accelerated adoption procedure by the European Parliament and the Council, if possible.
  
12. In the case where provisions referred to in Article 3(6) of Regulation 2019/876 should enter into force when the applicable legal framework would not provide for the application of the FRTB-inspired approaches for capital calculation purposes, competent authorities referred to in Article 4(2), points (i) and (viii), of Regulation (EU) No 1093/2010 should not prioritise any supervisory or enforcement action in relation to those requirements referred to in Article 3(6) of Regulation 2019/876, until the adoption of the legislative proposal achieving the full implementation of the FRTB, also taking into account any transitional period provided therein.

This opinion will be published on the EBA's website.

Done at Paris, 24 February 2023

[signed]

[José Manuel Campa]

Chairperson  
For the Board of Supervisors