

EBA/Op/2024/05

12 August 2024

EBA Public

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 Article 1, points (34), (35) and (38) of Regulation (EU) No 2024/1623

Introduction and legal basis

1. Article 325 of Regulation (EU) No 575/2013¹, in the currently applicable version introduced by Article 1, point (89) of Regulation (EU) No 2019/876², provides that institutions are required to:
 - a. Calculate the own funds requirements for market risk using 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 Article³.

¹ 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).

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).

³ Some institutions may be exempted from these reporting requirements in accordance with Article 325a of Regulation (EU) No 575/2013.

2. As clarified by recital (41) of Regulation (EU) No 2019/876, the reporting requirements under these new approaches were 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 at a later stage by means of a separate legislative proposal.
3. Regulation (EU) No 2024/1623⁴ finalised the introduction of the full FRTB framework in the Union. In particular, the new version of Article 325 of Regulation (EU) No 575/2013, as amended by Article 1, point (156)(a), of Regulation (EU) No 2024/1623, introduces the FRTB-inspired approaches for the purpose of calculating the own funds requirements for market risk.
4. In accordance with Article 2 of Regulation (EU) No 2024/1623, the amended Article 325 of Regulation (EU) No 575/2013 must apply from 1 January 2025. However, according to Article 461a of Regulation (EU) No 575/2013, *“The Commission shall monitor the differences between the implementation of international standards on own funds requirements for market risk in the Union and in third countries, including as regards the impact of the rules in terms of own funds requirements and as regards their date of application”* and is empowered to act in order to preserve an international level playing field where implementations differences are observed. In accordance with this empowerment, on 24 July 2024, the Commission adopted a Delegated Act⁵ whereby institutions, until 1 January 2026, are to continue to apply Part Three, Title IV, and the market risk requirements of Articles 430, 430b, 445 and 455 of that Regulation in the version in force on 8 July 2024.
5. Therefore, subject to the entry into force of the Commission Delegated Act⁶, the amended Article 325 of Regulation (EU) No 575/2013 will only apply from 1 January 2026.
6. Recital (39) of Regulation (EU) No 2024/1623 states that *“in order to avoid a significant operational burden for institutions in the Union, all of the requirements implementing the final FRTB standards for the purpose of calculating the own funds requirements for market risk should have the same date of application. Therefore, the date of application of a limited number of FRTB requirements that were already introduced by Regulation (EU) 2019/876 should be aligned with the date of application of this Regulation. (...)”*.
7. However, the application dates of some of the FRTB requirements are earlier than 1 January 2026.
8. In particular, Article 3(6) of Regulation (EU) No 2019/876 provided 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

⁴ Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (OJ L, 2024/1623, 19.6.2024).

⁵ <https://webgate.ec.europa.eu/regdel/web/delegatedActs/2528/documents/latest?lang=en>

⁶ The entry into force of the delegated act is subject to the procedure laid down in Article 462(6) of Regulation (EU) No 575/2013.

‘boundary framework’) in view of the introduction of the new own funds requirements for market risk in accordance with the FRTB, were applicable from 28 June 2023. That date had been set based on the assumption that, by that date of application, the legislative procedure fully implementing the FRTB would have been completed, and thus the amendments to the boundary framework would have applied for calculating the own funds requirements for market risk.

9. In this regard, as recalled by recital (39) of Regulation (EU) No 2024/1623, “on 27 February 2023, EBA issued an opinion that if provisions referred to in Article 3(6) of Regulation (EU) 2019/876 entered into force and the applicable legal framework did not yet provide for the application of the FRTB-inspired approaches for capital calculation purposes, competent authorities referred to in Regulation (EU) No 1093/2010 should not prioritise any supervisory or enforcement action in relation to those requirements, until full implementation of the FRTB has been achieved (...)”.
10. Given that full implementation of the FRTB has not yet been achieved, the EBA opinion referred to in paragraph 9 is not revoked and remains in full force.
11. In addition to the provisions referred to in Article 3(6) of Regulation (EU) 2019/876, other provisions relating to the boundary framework have an application date earlier than 1 January 2026. In particular, the following points of Article 1 of Regulation (EU) 2024/1623 are applicable from 1 January 2025: point (34), as regards Article 104, paragraphs 1 to 8 of Regulation (EU) No 575/2013, point (35)(b) and (c) and point (38).
12. Against this backdrop, the frontloaded application of those amendments to the boundary framework would not only affect the new FRTB-inspired approaches, notably those set out in Article 325(3) of Regulation (EU) No 575/2013, for the purpose of the additional reporting, but would fundamentally impact how institutions calculate their own funds requirements requiring a calculation of such 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.
13. Therefore, the application of the requirements set out in the provisions referred to in paragraph 11 from 1 January 2025 may be deemed inconsistent with the state of the implementation of the FRTB in the Union legislation.
14. The early application of the new boundary framework before the full implementation of the FRTB would be in contrast with the teleological interpretation of the provisions set out in paragraph 11, in light of the rationale outlined in Recital (39) of Regulation (EU) 2024/1623 which emphasises the EU legislators’ intent to align the date of application of all components of the FRTB standards. In addition, the frontloading of some provisions of the new boundary framework – 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 understood between 1 January 2025 and 31 December 2025.

15. The EBA's competence to deliver this Opinion in the form of a no-action letter is based on Article 9c of Regulation (EU) No 1093/2010⁷, which provides that the EBA may issue no-action letters, if it considers that the application of one of the relevant legislative acts raises 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.
16. In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors⁸, 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

17. The front-loaded application of the requirements set out in Article 1, point (34), as regards Article 104, paragraphs 1 to 8 of Regulation (EU) No 575/2013, point (35)(b) and (c) and point (38) of Regulation (EU) No 2024/1623 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 FRTB 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 FRTB framework. This would de facto lead global institutions to be subject to very different regulatory requirements depending on where the risk management is performed, resulting in a fragmentation of the regulatory framework and, hence, of the financial markets, as well as potential issues for the level playing field.

Specific proposals

18. In these circumstances, a legislative proposal to provide the necessary legal certainty as concerns the application of the requirement set out in Article 1, point (34), as regards Article 104, paragraphs 1 to 8 of Regulation (EU) No 575/2013, point (35)(b) and (c) and point (38) of

⁷ 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).

⁸ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

Regulation (EU) No 2024/1623 should be introduced by the Commission, under an accelerated adoption procedure by the European Parliament and the Council, if possible.

19. In the case where Article 1, point (34), as regards Article 104, paragraphs 1 to 8 of Regulation (EU) No 575/2013, point (35)(b) and (c) and point (38) of Regulation (EU) No 2024/1623 should apply 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 the requirements referred to in those provisions, until the date when FRTB requirements are fully implemented for the purpose of calculating the own funds requirements for market risk.

20. The EBA opinion EBA/Op/2023/02 dated 27 February 2023 shall equally apply until the date when FRTB requirements are fully implemented for the purpose of calculating institutions' own funds requirements for market risk.

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

Done at Paris, 12 August 2024

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors