

EBA/CP/2015/20

10 November 2015

Consultation Paper

Draft Implementing Technical Standards

on common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council

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1. Responding to this consultation

The European Banking Authority (EBA) invites comments on all proposals put forward in this paper.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 10 February 2016. Please note that comments submitted after this deadline, or submitted via other means, may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Directive 2013/36/EU sets out the legal framework for the prudential assessment of acquisitions by natural or legal persons of qualifying holdings in credit institutions and of further increases of such holdings. The Directive, recognising the potential international and cross-sectorial dimensions of such acquisitions, sets out in Article 22(9) a specific mandate for EBA to develop draft Implementing Technical Standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU. This consultation paper sets out the EBA proposal to fulfil this mandate.

EBA has assessed various options available for delivering this mandate and, on the basis of the feedback provided by several authorities, has concluded, in respect of the steps to be followed for the consultation process, that a streamlined process consisting of the requesting authority sending a single consultation notice would be preferable to a notification process requiring also the delivery of a preliminary notice. Furthermore, in respect of the information which may be requested, EBA has concluded that the most suitable option is to allow more flexibility for the authorities, whilst at the same time stipulating a minimum list of information which should be requested.

The draft Implementing Technical Standards set out requirements for the designation of contact points by competent authorities, as well as a timeframe and process for submitting the consultation notice and for providing the response, which is meant to ensure a timely assessment of the proposed acquisition. Furthermore, in the interests of ensuring that the process is as effective as possible, the draft Implementing Technical Standards provide templates for the consultation notice and for the response from the requested authority. Requirements are also included in respect of the language and means of communication, as well as the provision of mutual feedback.

Next steps

Following the conclusion of the consultation period, the draft Implementing Technical Standards will be finalised and submitted to the European Commission for it to decide whether to endorse EBA's draft technical standards.

3. Background and rationale

1. Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 established the legal framework for the prudential assessment of proposed acquisitions and increases of qualifying holdings in credit institutions, assurance, insurance or re-insurance undertakings and investment firms. The provisions of Directive 2007/44/EC relating to proposed acquisitions and increases of qualifying holdings in credit institutions were flown into Directive 2013/36/EU.
2. Directive 2013/36/EU recognises the fact that the nature of the proposed acquirer might entail an international or a cross-sectorial dimension of the proposed acquisition. As such, pursuant to Article 24 of Directive 2013/36/EU, the relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is one of the following:
 - a. a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC ('UCITS management company') authorised in another Member State or in a sector other than that in which the acquisition is proposed;
 - b. the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
 - c. a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.
3. In order to ensure that the consultation is as effective as possible, EBA is required, pursuant to Article 22(9) of Directive 2013/36/EU, to develop draft Implementing Technical Standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU and power is conferred on the Commission to adopt such Implementing Technical Standards.
4. This paper sets out for the purposes of consultation the draft Implementing Technical Standards prepared by EBA pursuant to the mandate set out in Article 22(9) of Directive 2013/36/EU.

4. Draft Implementing Technical Standards

DRAFT COMMISSION IMPLEMENTING REGULATION (EU) No .../...

of [dd mm yyyy]

laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU 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 Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and in particular Article 22(9) thereof,

Whereas:

- (1) It is appropriate to set out common procedures, forms and standard templates to ensure the accurate assessment by competent authorities of notifications of proposed direct or indirect acquisitions or increases of qualifying holdings in credit institutions. In those cases, the relevant competent authorities should consult and provide each other with the requested information and any other essential information.
- (2) To facilitate the cooperation between competent authorities and ensure efficiency in their exchange of information, competent authorities should designate dedicated contact points specifically for the purpose of the consultation process provided in Article 24 of Directive 2013/36/EU and make such information publicly available on their websites.
- (3) Consultation procedures containing clear timing requirements should be set up in order to ensure the timely and efficient cooperation between competent authorities.
- (4) The procedures should also aim at ensuring that competent authorities cooperate and work towards the improvement of the process by promoting, where appropriate, the exchange of feedback on the quality and relevance of the information received.

- (5) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority to the European Commission.
- (6) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

Article 1 - Designated contact points

For the purposes of the cooperation process set out in Article 24 of Directive 2013/36/EU, the relevant competent authorities contemplated therein shall designate, by way of a single address of a dedicated department or mailbox, contact points for communication pursuant to this Regulation and shall make such information publicly available on their websites.

Article 2 - Consultation notice

1. The competent authority of the credit institution in which a qualifying holding is proposed to be acquired or increased (the 'requesting authority') shall send to the relevant competent authority of the proposed acquirer or, as the case may be, of a credit institution, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed and which is either a subsidiary of, or is controlled by, the proposed acquirer (the 'requested authority') a consultation notice as soon as possible after receipt of a notification in accordance with Article 22(2) of Directive 2013/36/EU and, in any event, no later than within 10 working days from the commencement of the assessment period.
2. A requesting authority shall send a consultation notice in writing by overnight courier, facsimile or electronic means to the designated contact point of the requested authority.
3. A requesting authority shall send a consultation notice in the format set out in Annex I, specifying the main details of the proposed acquisition and details of the relevant information that the requesting authority asks from the requested authority in relation thereto.

Article 3 - Response from a requested authority

1. A response to a consultation notice shall be made in writing, using the format set out in Annex II, by overnight courier, facsimile or electronic means and, unless otherwise specified by the requesting authority, shall be addressed to the designated contact point of the requesting authority contemplated in Article 1.
2. The requested authority shall provide the requesting authority as soon as possible and no later

than within 20 working days of receipt of the consultation notice with:

- (a) all relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer; and
 - (b) any other essential information, on its own initiative.
3. If, due to exceptional circumstances, the requested authority is likely not to be able to meet the time limit set out in paragraph 2, it shall promptly inform the requesting authority, indicating the reasons for the delay and an estimated date of response.
4. If, due to exceptional circumstances, the requested authority is not able to provide all the required information in time for meeting the time limit set out in paragraph 2, it shall:
 - (a) provide such information as is already available within the time limit set out in paragraph 2, using the format set out in Annex II; and
 - (b) provide any missing information as soon as it becomes available and in a manner which ensures that any necessary action may proceed expediently (including, by way of derogation from Article 3(1), verbally).
5. If the requested information is provided verbally pursuant to Article 3(4)(b), it shall subsequently be confirmed in writing in accordance with Article 3(1).

Article 4 - Procedures for consultation

1. The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Articles 2(2) and 3(1), taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the requesting authority.
2. The information provided by competent authorities shall, to the best of their knowledge after due inquiry, be complete, accurate and up to date.
3. Upon receipt of a consultation notice, the requested authority shall communicate with the requesting authority in a timely manner if it requires any clarification in relation to the precise information requested. The requesting authority shall, in turn, respond promptly to any clarifications requested by the requested authority.
4. If the information requested is held by another authority in the same Member State as the requested authority but which does not constitute a competent authority for the purposes of Article 24 of Directive 2013/36/EU, the requested authority shall undertake best efforts to collect the information promptly and transmit it to the requesting authority in accordance with Article 3. If the information requested is held by another authority in a different Member State or by another authority in the same Member State which constitutes a competent authority for the purposes of Article 24 of Directive 2013/36/EU, the requested authority shall

promptly inform the requesting authority.

5. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in responding to a request.
6. The requested authority may ask to be updated on the outcome of the assessment in relation to which the consultation occurred and, where deemed appropriate, the requested authority and the requesting authority shall cooperate in providing feedback to each other on the usefulness of information or other assistance received and on any problems encountered in providing such assistance or information.
7. Where new information or a need for further information comes to light during the assessment period, the requesting authority and the requested authority shall ensure that all essential and relevant information is exchanged. The templates set out in Annexes I and II shall, where appropriate, be used for this purpose.
8. For the purposes of the consultation notice, of the response from the requested authority and of other related communication, competent authorities shall use a European Union official language in common use for international supervisory cooperation and shall publish the choice of such language or languages on their websites (or, if the Member States of the relevant competent authorities have a common official language, the relevant authorities may use such common language).
9. References in this Regulation to working days shall be deemed to constitute references to all days other than Saturdays, Sundays and public holidays in the jurisdiction of the authority which is required to comply with the relevant provision.

Article 5 - Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply in respect of notifications of proposed acquisitions and increases of qualifying holdings submitted to the competent authority pursuant to Article 22(1) of Directive 2013/36/EU after the date of entry into force hereof.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ANNEX I

Consultation notice template

[Article 2 of the Commission Implementing Regulation (EU) No .../...]

Consultation notice

Date:

FROM:
Member State:
Requesting Authority:
Address:

(Contact details of the designated contact point)

Telephone:
Email:

Reference number:

TO:
Member State:
Requested Authority:
Address:

(Contact details of the designated contact point)

Telephone:
Email:

Dear Sirs,

In accordance with Article 2 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU, a consultation notice is made in relation to the matters set out in further detail below.

Please note that the assessment procedure will expire on [*insert date*]*, therefore we would be grateful if you could provide the requested information and any other essential information, as well as any views or reservations you might have on the proposed acquisition, within 20 working days from receipt of this letter or, if that is not possible, an indication as to when you anticipate being in a position to provide the assistance which is sought.

This consultation notice, your response and their processing are subject to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Information on the proposed acquisition

Identity of the proposed acquirer(s):

* In accordance with the second subparagraph of Article 22(2) of Directive 2013/36/EU.

.....
.....
.....

[for natural persons, please include the personal details, including the person’s name, date and place of birth, personal identification number (where available) and address; for legal persons, please include the registered name, the registered address of its head office, the postal address (if different) and the national identification number (where available)]

Name of relevant regulated entity(/ies) in the requested authority’s Member State and relationship with the proposed acquirer:

.....
.....
.....

[where the proposed acquirer is a regulated entity as referred to in Article 24(1)(a) of Directive 2013/36/EU, the name of the proposed acquirer is sufficient. Where the proposed acquirer falls under one of the categories defined under Article 24(1)(b) or (c) of Directive 2013/36/EU, it is also necessary to explain the relationship of the proposed acquirer with the relevant regulated entity established in the requested authority’s Member State]

Identity of the target undertaking:

.....
.....
.....

[please insert the registered name, the registered address of its head office, the postal address (if different) and the national identification number (where available)]

Size of the current and intended direct or indirect holding of the proposed acquirer in the target undertaking:

.....
.....
.....

[please insert information on the shares of the target undertaking owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including (i) the number and type of shares, whether ordinary shares, or other, of the target undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition, along with the nominal value of such shares, (ii) the share of the overall capital of the target undertaking that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition and (iii) the share of the overall voting rights of the target undertaking that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target undertaking. For indirect acquisitions, such information shall be provided mutatis mutandis.]

Details of any other authorities involved:

.....

[whether the requesting authority has been or will be in contact with any other authority in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]

[Additional information provided by the requesting authority (if any):

.....

]

Type of assistance requested

Specific information requested:

.....

[please insert a detailed description of the specific information sought, including any relevant documents requested. Such information shall include:

- *if available, the most recent assessment of the suitability (in terms of being fit and proper) of the proposed acquirer or of the relevant officers of the relevant regulated entity;*
- *if available, the most recent assessment of the financial soundness of the proposed acquirer or of the relevant regulated entity, with related public or external audit reports;*
- *if available, the most recent assessment by the requested authority of the quality of the management structure of the proposed acquirer or of the relevant regulated entity, and its administrative and accounting procedures, internal control systems, corporate governance, group structure etc.;*
- *whether there are any grounds to suspect, in connection with the proposed acquisition, that money laundering or terrorist financing is being or has been committed or attempted,*

and any other specific information sought by the requesting authority.]

Yours sincerely,

[signature]

ANNEX II

Response from requested authority template

[Article 3 of the Commission Implementing Regulation (EU) No .../...]

Response from requested authority

Date:

General information

FROM:

Member State:

Requested Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Requested authority reference number:

TO:

Member State:

Requesting Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Requesting authority reference number:

Dear Sirs,

In accordance with Article 3 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU, your consultation notice dated [dd.mm.yyyy] with the reference number referred to above has been processed by us.

This response is subject to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Please set out the requested information here or make reference to the relevant annexes containing the information requested:

.....
.....
.....
.....

If there is any other essential information or other information the requested authority would like to provide, please provide such information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing that information:

.....
.....
.....
.....

[please provide, on your own initiative, any essential information, such as group structure or the most recent assessments of the financial soundness of the proposed acquirer or of the relevant regulated entity]

If there are any views or reservations in relation to the proposed acquisition, please provide them here:

.....
.....
.....
.....

If any requested information was not available when preparing this response and awaiting such information would have resulted in the response not being submitted within the required timeframe, please identify such information here and specify when it is expected that such information will be provided:

.....
.....
.....
.....

Yours sincerely,

[signature]

5. Accompanying documents

Cost-benefit analysis / impact assessment

Introduction

Directive 2013/36/EU sets out the legal framework for the prudential assessment of acquisitions by natural or legal persons of qualifying holdings in credit institutions and of further increases of such holdings. The Directive, recognising the potential international and cross-sectorial dimensions of such acquisitions, sets out in Article 22(9) a specific mandate for EBA to develop draft Implementing Technical Standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU. This consultation paper sets out the EBA proposal to fulfil this mandate.

Problem identification

Directive 2013/36/EU recognises that the nature of the proposed acquirer might entail an international or a cross-sectorial dimension. As such, pursuant to Article 24 of Directive 2013/36/EU, the relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed. The relevant competent authorities shall also consult each other if the proposed acquirer is the parent undertaking or a natural or legal person controlling one of the abovementioned entities.

The current impact assessment identifies and evaluates the policy options for the harmonisation of procedures and timeframes for such consultation process when the target undertaking (i.e. the entity in which the holding is being acquired or increased) is a credit institution.

Policy objectives

In order to ensure that the consultation is as effective as possible, EBA is required, pursuant to Article 22(9) of Directive 2013/36/EU, to develop draft Implementing Technical Standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24 of Directive 2013/36/EU and power is conferred on the Commission to adopt such Implementing Technical Standards.

As the present Implementing Technical Standards do not aim to fully align with the provisions of other European Supervisory Authorities (ESAs) in respect of acquisitions of qualifying holdings in

financial sector undertakings other than credit institutions, the IA evaluates only the different options for the procedures relating to the acquisition or increase of a qualifying holding in a credit institution and the relevant impact from the harmonisation of these procedures.

Baseline scenario

Currently there is no common framework for the procedures, forms and templates for the consultation process between the relevant competent authorities for the prudential assessment of the proposed acquisitions or increases of qualifying holdings in credit institutions. Hence, the baseline scenario would be to not establish any new framework and to not streamline across EU the processes for the assessment of such transactions.

The baseline scenario of retaining the diverse procedures across EU cannot be retained as it contradicts the mandate of the Directive 2013/36/EU. Nonetheless, the estimation of costs and benefits for the application of the baseline scenario would be useful for the estimation of the additional costs to be assumed by the main policy options to be considered in the following section.

Since there is no evidence of the current practices, nor any stocktaking exercise that is being conducted, the exact costs and benefits arising from the current application of the diverse processes cannot be estimated. Thus, the baseline scenario cannot be used as the basis for the evaluation of the additional cost when applying the main scenarios.

Options considered

During the process of the drafting of the current ITS, the EBA has considered various options for the fulfilment of this mandate on the basis of the feedback provided by several authorities.

The two policy options considered are the following:

Option 1: a one-step streamlined process which requires sending a single consultation notice to the pertinent authority; and

Option 2: a two-step streamlined notification process which also requests sending a preliminary notice, i.e. a preliminary notice and a consultation notice.

In the absence of a quantifiable baseline scenario, the EBA has evaluated the above options by taking into consideration their qualitative characteristics and the cost – benefit analysis that follows in the next section.

On qualitative terms, a streamlined process, which assumes the sending of a single consultation notice (Option 1), would be preferable to a notification process requiring also the delivery of a preliminary notice (Option 2), as the former implies the shortening of the timeline for the approval of the acquisition. Additionally, the two-step process that also includes the notification

stage would not provide the authorities with the necessary information to speed up the approval process at the second stage of the notification (the consultation notice). Thus, the EBA has concluded that the most suitable option is to establish a one-step process.

Cost-Benefit Analysis

Option 1: a one-step streamlined process which requests sending a single consultation notice to the pertinent authority.

Costs - Benefits: the source of the cost for this option arises from the generic need to streamline the processes across EU making the coordination more efficient. Although this assumes a one-off cost for the establishment of processes and best practices for achieving harmonisation, the long term benefits from the application of an effective harmonised approach for the assessment of acquisitions would compensate any start-up one-off cost. The net impact (benefits minus costs) of the application of the suggested ITS proposals, i.e. the additional cost for streamlining the process, would be positive, although of low magnitude in relation to the current operational cost of credit institutions and competent authorities that relates to the assessment of an acquisition.

Option 2: a two-step streamlined notification process which also requests sending a preliminary notice, i.e. preliminary notice and consultation notice.

Costs - Benefits: the source of the cost for this option also arises from the generic need to streamline the processes across EU making the coordination more efficient. However, the implementation of an additional step could involve a delay of the approval of an acquisition and be more cumbersome for the requesting authority, which would have an impact on the effectiveness of the process. Thus, this process implies slightly higher costs while the benefits would be identical. This results in a net impact for Option 2 that would be slightly higher than Option 1 but would still remain at low levels.

Preferred option

Having taken into account both the qualitative assessment and the cost-benefit analysis, the EBA suggests the implementation of Option 1. To facilitate the application of this option, the ITS should stipulate the minimum list of information which should be requested, providing at the same time some level of flexibility to allow the authorities to deal with individual cases in their jurisdictions.

Thus, the draft Implementing Technical Standards should set out the requirements for:

- (a) the designation of contact points by competent authorities; and
- (b) the timeframe and details on the process for the submission of the consultation notice and the provision of response, which is meant to ensure a timely assessment of the proposed acquisition.

To ensure that the process is as effective as possible, the draft Implementing Technical Standards should also provide templates for the consultation notice and for the response from the requested authority. Finally, the ITS should also clarify the language and means of communication to be used for the provision of mutual feedback for the assessment of the acquisitions.