

Consultation Paper

Draft Implementing Technical Standards

On the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities under Article 143(3) of the Capital Requirements Directive



Consultation Paper on Draft Implementing Technical Standards on the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities under Article 143(3) of the Capital Requirements Directive

Table of contents

1.	Responding to this Consultation	3
2.	Executive Summary	4
3.	Background and rationale	5
4.	Draft Implementing Technical Standards (ITS)	7
5.	Accompanying documents	12
5.1	Draft Cost- Benefit Analysis / Impact Assessment	12

1. Responding to this Consultation

The EBA invites comments on all proposals put forward in this paper.

Comments are most helpful if they:

- respond to the question posed;
- 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 09.10.2013. 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) No 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

Article 143(1) of the Capital Requirements Directive– (CRD)¹ requires competent authorities to publish information on:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation,
- (b) the manner of exercise of the options and discretions available in the Union,
- (c) the general criteria and methodologies they use for the purpose of their supervisory review and evaluation process (SREP),
- (d) aggregate statistical data on key aspects of the prudential framework in each Member State, including the number of supervisory measures taken in accordance with Article 102(1)(a) of the CRD, and on administrative penalties imposed in accordance with Article 65.

This consultation paper puts forward the draft ITS in accordance with Article 143(3) of the CRD, where the EBA is mandated to ‘develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the information listed in [Article 143] paragraph 1.’

These draft ITS are structured in seven articles. The first article establishes the subject matter and scope. The second article provides the list of forms to be completed by competent authorities in order to disclose information on the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation. Articles 3 and 4 concern the template to be completed by competent authorities to provide information on how they exercise the options and discretions available in Union law and on the general criteria and methodologies used for the purpose of the supervisory review and evaluation process referred to in Article 97 of the CRD. The fifth article provides a list of templates to be completed by competent authorities in order to disclose aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State. Article 6 determines the annual publication date of this information and Article 7 determines when the Regulation enters into force.

The detailed templates listed in the ITS are presented in the Annex. They cover the following regulatory topics:

- Rules and guidance, with specific templates covering the application of the Capital Requirements Directive, guidance for model approval, slotting criteria, waivers for solo supervision, mergers and acquisitions, credit risk mitigation, application of Pillar 3, changes to minimum loss given default values, remuneration, eligible providers of unfunded credit protection, application of the reporting on financial information;
- Options and national discretions ;
- Supervisory review and evaluation process criteria and methodologies ;
- Aggregate statistical data on national banking sectors, credit risk, market risk, operational risk and supervisory measures / administrative penalties.

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 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, OJ L 176, 27.6.2013, p. 338. The final text can be read at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:176:SOM:EN:HTML>.

These templates are to be completed by competent authorities as of 31 December each year and published on the following 31 July.

3. Background and rationale

The role of disclosure is specifically set out in the Capital Requirements Directive. In particular, Article 143(1) provides that ‘competent authorities shall publish the following information:

- (a) the text of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;
- (b) the manner of exercise of the options and discretions available in Union;
- (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 97;
- (d) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II of this Directive and Articles 54 and 58 of Directive 2004/39/EC, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with Article 102(1)(a), and of administrative penalties imposed in accordance with Article 65.’

Moreover, Article 143(2) underlines that ‘the information published according to [Article 143] paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by competent authorities of the different Member States. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location’. Therefore, not only should this information provide disclosure on the supervisory framework applied by each competent authority of the Member States but it should also allow these authorities, the EBA and the general public to compare the approaches between jurisdictions and hence promote convergence of supervisory practices in the Single Market.

Article 144 of Directive 2006/48/EC already required competent authorities to disclose information on their supervisory framework. In order to promote a transparent and efficient framework for such disclosure, the Committee of European Banking Supervisors (CEBS) published in 2005 its first Guidelines on Supervisory Disclosure². This framework was intended to make supervisory practices more transparent, with the objective of promoting the legitimacy and the credibility of supervisors from the perspective of the institutions they supervise. The format of disclosure plays an important role in allowing meaningful comparison and the CEBS Guidelines therefore provided templates for supervisory disclosure consisting of a series of similar information templates in a standard format. These templates have been used since 2007 by the public and the supervisory community to assess the degree of convergence of supervisory practices in the European Union.

² <http://eba.europa.eu/getdoc/4a99922a-3a14-4500-b1bb-9002fe5e8d8c/GL05.aspx>

The scope of the framework for supervisory disclosure which was implemented in 2007 was limited to the provisions of the Capital Requirements Directive that implemented Basel II. These Guidelines were revised in January 2010 to reflect the development of the CRD and the outcome of the CEBS work on the convergence of supervisory practices³.

These Implementing Technical Standards assigned to the EBA by Article 143(3) of Directive 2013/36/EU elaborate on the former guidance provided in the CEBS Guidelines on Supervisory Disclosure by providing a single format, structure, content list and publication date for the information listed in Article 143(1) to be disclosed by competent authorities. These standards will be part of the single rulebook strengthening regulatory harmonisation in the European Union.

Main features of the ITS

The draft ITS are structured in seven articles. The first article establishes the subject matter and scope. The second article provides the list of forms to be completed by competent authorities in order to disclose information on the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation. Articles 3 and 4 concern the template to be completed by competent authorities to provide information on how they exercise the options and discretions available in Union law and on the general criteria and methodologies used for the purpose of the supervisory review and evaluation process referred to in Article 97 of the CRD. The fifth article provides a list of templates to be completed by competent authorities in order to disclose aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State. Article 6 determines the annual publication date of this information and Article 7 determines when the Regulation enters into force.

The detailed templates listed in the ITS are presented in the Annex. They cover the following regulatory topics:

- Rules and guidance, with specific templates covering the application of the Capital Requirements Directive, guidance for model approval and validation, slotting criteria, waivers for solo supervision, mergers and acquisitions, credit risk mitigation, application of Pillar 3, securitisation, changes to minimum loss given default values, remuneration, eligible providers of unfunded credit protection, application of the reporting on financial information
- Options and national discretions ;
- Supervisory review and evaluation process criteria and methodologies
- Aggregate statistical data on national banking sectors, credit risk, market risk, operational risk and supervisory measures / administrative penalties.

These templates are to be completed by competent authorities as of 31 December each year and published on the following 31 July.

³ <http://eba.europa.eu/documents/Publications/Standards---Guidelines/2010/CEBSGuidelinesonSupervisoryDisclosurerevisedJan.aspx>

4. Draft implementing standard on the format, structure, contents list and annual publication date of supervisory information

COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities according to Directive 2013/36/EU of the European Parliament and of the Council

of XXX

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms⁴ and in particular Article 143(3) thereof,

Whereas:

- (1) Title VIII of Directive 2013/36/EU requires that supervisory information be disclosed by competent authorities in order to facilitate the assessment of the degree of standardisation of supervisory practices across Europe. Such assessment will allow the European Supervisory Authority (European Banking Authority) (EBA), competent authorities, financial institutions and the public to identify and mitigate impediments to a level playing field and incentives for regulatory arbitrage. The information disclosed should therefore be sufficiently granular to ensure effective assessments can be carried out across the range of supervisory responsibilities.
- (2) In order to further facilitate this assessment, supervisory information from all competent authorities should be published in a common format, updated regularly and be made accessible on the EBA website. Given Article 144 of Directive 2013/36/EU specifying the contents list for certain specific supervisory disclosure requirements, and in order to ensure effective harmonisation of supervisory disclosure, these implementing technical standards should lay down the format, structure and annual publication date for those specific requirements to the extent that they also fall within the category of general supervisory disclosures specified in that Article.
- (3) These technical standards should build on the guidelines on supervisory disclosure issued by the Committee of European Banking Supervisors, taking into account the need to enhance the degree of disclosure in order to assist the EBA in carrying out its duties.
- (4) While the supervisory disclosure requirements in Title VIII of Directive 2013/36/EU extend across the field of prudential regulation, as a first step these technical standards should focus on the supervisory responsibilities which stem from that Directive and from Regulation (EU) No 575/2013 of the European Parliament and of the Council of

⁴ OJ L 176, 27.06.2013, p. 338.

26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012⁵.

- (5) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (6) The EBA 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- Subject matter and scope

This Regulation lays down implementing technical standards on the format, structure, contents list and annual publication date of the information listed in Article 143(1) of Directive 2013/36/EU in the field of prudential regulation covered by the following acts:

- (1) Directive 2013/36/EU;
- (2) Regulation (EU) No 575/2013.

Article 2 – Rules and Guidance

Competent authorities shall publish the information on texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation using the form set out in the part of Annex 1 stated in the following table:

Transposition of Directive 2013/36/EU	Part 1
Guidance for model approval	Part 2
Higher minimum Loss Given Default (LGD) values for retail exposures secured by immovable property	Part 3
Higher risk weights or stricter criteria for exposures secured by immovable property	Part 4
Slotting criteria	Part 5
Credit risk mitigation	Part 6
Disclosures by institutions (Part 8 of Regulation (EU) No 575/2013)	Part 7
Variable element of remuneration	Part 8
Disclosures on waivers	Part 9
Mergers and acquisitions	Part 10
Regulatory and financial reporting	Part 11

⁵ OJ L 176, 27.06.2013, p. 1.

Article 3 – Options and national discretions

“Option” refers to a situation in which Member States are given a choice on how to comply with a given provision, selecting from a range of alternatives set forth in the Union Legislation.

“Discretion” refers to a situation in which competent authorities or Member States are given a choice as to whether to implement, or not to implement, a given provision.

Competent authorities shall publish information on the manner of exercise of options and discretions available in Union law using the forms set out in Annex 2.

Competent authorities shall publish information on the manner of exercise of transitional provisions referred to in Part 10, Title 1 of Regulation (EU) No 575/2013 using the forms set out in the part of Annex 2 stated in the following table:

Capital ratios	Part 1
Treatment of unrealised losses measured at fair value	Part 2
Treatment of unrealised gains measured at fair value	Part 3
Exemption from deduction of equity holdings in insurance companies from CET 1 items	Part 4
Introduction of amendments to IAS 19	Part 5
Deductions from CET 1, AT 1 and Tier 2 items	Part 6
Recognition in consolidated CET 1 capital of instruments and items that do not qualify as minority interests	Part 7
Recognition in consolidated own funds of minority interests and qualifying AT 1 and Tier 2 capital	Part 8
Additional filters and deductions	Part 9
Determining the limits for grandfathering of items within CET 1, AT 1 and Tier 2 items	Part 10
Exemption from the IRB treatment for certain categories of equity exposures	Part 11

Article 4 – Supervisory review and evaluation process general criteria and methodologies

Competent authorities shall publish information on the general criteria and methodologies they use in the review and evaluation referred to in Article 97 of Directive 2013/36/EU using the form set out in Annex 3.

Article 5 – Aggregate statistical data

Competent authorities shall publish the information on aggregate statistical data on key aspects of the implementation of the prudential framework using the form set out in the part of Annex 4 stated in the following table:

Data on the national banking sector	Part 1
Data on credit risk	Part 2
Data on market risk	Part 3
Data on operational risk	Part 4
Data on supervisory measures and administrative penalties	Part 5

Article 6 – Annual publication date

Competent authorities shall publish the information listed in Article 143(1) of Directive 2013/36/EU on their website for the first time by 31 July 2014. Competent authorities shall each year update the information by 31 July based on the position as at 31 December of the preceding year.

Competent authorities may update the information published in relation to points (a) to (c) of Article 143(1) of Directive 2013/36/EU at other times in order to reflect changes to that information that have taken place since 31 December.

Article 7- Final provisions

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

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

[see attached Excel file]

5. Accompanying documents

5.1 Draft Cost- Benefit Analysis / Impact Assessment

Introduction

1. Under Article 15(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any draft implementing technical standards developed by the EBA – when submitted to the EU Commission for adoption – are to be accompanied by an Impact Assessment (IA) which analyses ‘the potential related costs and benefits’. Such Impact Assessment should provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.
2. This note outlines the Impact Assessment (IA) concerning the format, structure, contents list and annual publication date of the information listed in Article 143(1) of Directive 2013/36/EU.

Problem definition

Issues addressed by the European Commission (EC) regarding the disclosure of supervisory information by competing authorities

3. In its assessment of the impact of the CRDIV framework, the Commission highlighted the fact that the fragmentation of supervisory reporting practices between Member States:
 - (i) hampers effective communication and cooperation between supervisory authorities, putting financial stability and depositor protection at risk in particularly in stressed circumstances when coordination between national supervisors is necessary;
 - (ii) imposes additional reporting costs on cross-border institutions, because of different sets of requirements that apply at consolidated and subsidiary levels.
4. To address these issues, the European Commission proposed *inter alia* that national authorities should publish supervisory information using a common format. The Commission also required that this information should be updated regularly and be accessible on the EBA website.

Issues addressed by the ITS and objectives

5. These ITS will ensure the consistency of the information reported by providing detailed standards of reporting. The ITS specify the format of the templates that national authorities should use and the information they should report to meet the requirements of the CRD. The proposals made in these ITS aim to achieve the two following objectives:
 - ▶ To provide a reporting format that is as uniform as possible, in order to allow meaningful comparisons between supervisory practices between two Member States and highlight any differences in implementation of the various national discretions.
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- ▶ To provide sufficient granularity in the reported information so that users of the information have enough elements to assess institutions' compliance with the Regulation in place.

Impact of the ITS

Costs

6. Competent authorities were already required by Article 144 of Directive 2006/48/EU to publish some information regarding their supervisory practices using a template provided by the CEBS Guidelines on Supervisory Disclosure. These ITS update the information to be disclosed to take account of the development of CRDIV and the changes introduced by Directive 2013/36/EU. Since the changes made to the template are not very significant, the EBA expects that National Supervisory Authorities will require few additional resources to update the information they are already providing. The resources dedicated to updating on a regular basis the information published on national supervisory practices should therefore not vary significantly and continue to be limited.

Benefits

7. The requirements proposed in these ITS will ensure that the information on the supervisory practices across Member State is readily available in one place. Users will be able to make comparisons more easily between the differences in implementation of the European rules among Member States. Finally, the publication of the information in a unified format will facilitate the assessment of regulatory compliance for cross-border institutions and regulatory colleges.
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