

EBA/CP/2024/16

16 July 2024

Consultation Paper

Draft Implementing Technical Standards on amending Commission Implementing Regulation (EU) 2016/100 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 5.2.

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 **16 October 2024**. 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 (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Article 20(8) of the Regulation (EU) 575/2013 (CRR), as amended by the Regulation (EU) 2024/1623 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (so-called CRR III), mandates the EBA to develop draft implementing technical standards (ITS) to specify the joint decision process referred to in Article 20(1)(a) with regard to the applications for permissions referred to in Article 143(1) and Article 151(9)¹, Article 283², and Article 325az³ of this Regulation.

This mandate was already included in the CRR and fulfilled by means of the EBA/ITS/2014/06⁴, subsequently adopted by the European Commission with the Commission Implementing Regulation (EU) 2016/100⁵. The main novelty of the new mandate stems from the overall revised scope for internal models set out in the CRR III, where the possibility to apply these approaches is no longer in place for operational risk.

Against this backdrop, the EBA decided to amend the existing ITS to consider changes to the EU legal framework, in particular changes related to the Advanced Measurement Approach (AMA) for operational risk which has been removed from the scope of application of the ITS and the EBA RTS/ITS on the general conditions and operational functioning of supervisory colleges.

Next steps

After a consultation period of 3 months, the EBA will submit the final draft ITS to the EU Commission for the adoption process. Once published in the EU Official Journal, the draft ITS will amend the Commission Implementing Regulation (EU) 2016/100.

¹ For Internal Rating Based approaches – IRB.

² For Internal Model Methods – IMM.

³ For Internal Model Approach – IMA.

⁴ ‘EBA FINAL draft Implementing Technical Standards on Joint Decisions on Prudential Requirements in accordance with Article 20 of Regulation (EU) No 575/2013’.

⁵ ‘COMMISSION IMPLEMENTING REGULATION (EU) 2016/100 of 16 October 2015 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council’.

3. Background and rationale

1. The existing ITS refers to the competent authorities' decision to grant the permission, or not, and to determine the terms and conditions, if any, to which such permission should be granted for the use of internal models for credit risk, counterparty credit risk (CCR) and market risk for prudential purposes for an EU parent institution and its subsidiaries, or jointly for subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company.
2. In line with its scope, the ITS details the steps to be undertaken by competent authorities when assessing a request for permission to an institution to use internal models for prudential purposes in case a joint decision (JD) is needed.
3. The objective of the mandate is to ensure the timely and efficient cooperation between authorities enabling them to reach a JD on the permission sought by the institution within the timeframe defined in accordance Article 20(2) CRR, i.e.: six months from the date of receipt of a complete application by the consolidating authority.
4. In particular, the ITS establishes the process to help the consolidating supervisor and the 'relevant competent authorities' to work together while they are performing their assessments and preparing their contributions to the JD, including specification on the procedure for assessing the completeness of application and the home-host cooperation in organising the JD process and the timing thereof, reflecting the scope and complexity of the application. The ITS also cover other aspects of cooperation like division of work and discussion of resources needed from each competent authority involved.
5. The ITS has not been revised since its entry into force in 2016. The content and objective of the revised mandate are the same as the original one but for the scope of application, which has been revised by CRR III, where Advanced Measurement Approach (AMA) for operational risk are no longer applicable.
6. In addition to this regulatory-driven change, the EBA explored the possibility of introducing further and more targeted changes to the ITS based on the practical experience accumulated by CAs over the last decade. This included several revalidation processes for internal models related to the EBA IRB repair program. Overall, competent authorities regarded the current framework as robust and capable of facilitating adequate cooperation between authorities, indicating no significant need for adjustments.
7. Therefore, the proposed revised ITS reflect the changes to the EU legal framework, mainly regarding the reduced scope of application of internal models and the updated EBA RTS⁶/ITS⁷ on the general conditions of functioning and operational functioning of supervisory colleges.

⁶ EBA/RTS/2024/01'Final Report Draft regulatory technical standards on general conditions of the functioning of supervisory colleges under Article 51(4) and Article 116(4) of Directive 2013/36/EU (Capital Requirements Directive – CRD V)'.

⁷ EBA/ITS/2024/01'Final Report Draft implementing technical standards on the operational functioning of supervisory colleges under Article 51(5) and Article 116(5) of Directive 2013/36/EU (Capital Requirements Directive – CRD V)'.

Question for consultation:

Q1. Do you consider that the changes proposed in the revised ITS are appropriate and sufficiently clear?

4. Draft implementing standards

EBA/ITS/20XX/XX

DD Month YYYY

Draft implementing technical standards amending Commission Implementing Regulation (EU) 2016/100 specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013

COMMISSION IMPLEMENTING REGULATION (EU) No .../...
of [date]

amending Commission Implementing Regulation (EU) 2016/100 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 [FOOTNOTE WITH OJ REFERENCE] and in particular Article 20(8), third subparagraph thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2016/100¹, which specifies the joint decision process with regard to the application for certain prudential permissions, should be amended to reflect the changes in the legal framework occurred since entry into force, with particular reference to the repeal of the provisions of Regulation (EU) No 575/2013 concerning the Advanced Measurement Approach (AMA) for operational risk.
- (2) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Banking Authority (EBA).
- (3) 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council².

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2016/100 is amended as follows:

- (1) Article 1 is replaced by the following:

‘This Regulation specifies the joint decision process referred to in Article 20(1), point (a) of Regulation (EU) No 575/2013 with regard to the applications for the permissions referred to in Article 143(1), Article 151(9), Article 283 and Article 325az of that Regulation with a view to facilitating joint decisions.’

¹ Commission Implementing Regulation (EU) 2016/100 of 16 October 2015 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 21, 28.1.2016, p. 45–53).

² 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).

(2) In Article 3, paragraph 1 is replaced by the following:

‘1. The consolidating supervisor may decide to involve third country supervisory authorities which participate in the supervisory college pursuant to Article 3(3) of Commission Delegated Regulation (EU) 2024/XX ⁽³⁾ [PO Please insert the number of the new delegated regulation repealing Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2)] in the assessment of applications submitted pursuant to Article 20(1), point (a) of Regulation (EU) No 575/2013 where the applicant operates in that third country and intends to apply the methodologies concerned to exposures in that third country. In that case, both the consolidating supervisor and those authorities shall reach an agreement on the scope of involvement of the third country supervisory authorities for the following purposes:

- (a) providing the consolidating supervisor with their contribution to the assessment report prepared by the consolidating supervisor;
- (b) adding as annexes the contributions referred to in point (a) of this paragraph to the assessment report prepared by the consolidating supervisor.’.

(3) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Upon receipt of an application for a permission referred to in Article 143(1), Article 151(9), Article 283, and Article 325az of Regulation (EU) No 575/2013 submitted by the applicant, the consolidating supervisor shall forward the application to the relevant competent authorities without undue delay, and in any case within 10 days.’.

(b) paragraph 3 is replaced by the following:

‘3. An application shall be deemed complete if it contains all information needed by the competent authorities in order to assess the application in accordance with the requirements set out in Regulation (EU) No 575/2013 and in particular in Articles 143, 144, 151, 283 and 325az of that Regulation.’.

(4) In Article 5, in paragraph 3, point (c) is replaced by the following:

‘(c) it shall take into account, so far as possible, the other activities being undertaken by the consolidating supervisor and the relevant competent authorities under the examination programme of the supervisory college referred to in Article 16 of Delegated Regulation (EU) 2024/XX [PO Please insert the number of the new delegated regulation repealing Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2)].’.

³ [PO Please insert the OJ reference to the new delegated regulation repealing Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2)]

(5) In Article 6, paragraph 3 is amended as follows:

(a) point (a) is replaced by the following:

‘(a) an opinion on whether or not the permission requested should be granted, based on the requirements set out in Article 143(1), Article 151(9), Article 283, Article 325az of Regulation (EU) No 575/2013, together with the reasoning to support the opinion;’.

(b) point (c) is replaced by the following:

‘(c) the assessments relating to the matters which competent authorities are required to assess in accordance with the requirements set out in Regulation (EU) No 575/2013 which relate to the permissions referred to in Articles 143, 144, 151, 283, 325az of that Regulation;’.

(6) In Article 7, in paragraph 3, point (i) is replaced by the following:

‘(i) any terms and conditions to be met by the applicant, including corresponding reasoning, before using the permission referred to in Article 143(1), Article 151(9), Article 283, Article 325az of Regulation (EU) No 575/2013, where applicable;’.

(7) In Article 13, paragraph 1 is replaced by the following:

‘1. Where an application for permission relates to material model extensions or changes in accordance with Article 143(3), Article 151(9), Article 283, or Article 325az of Regulation (EU) No 575/2013, the consolidating supervisor and the competent authorities responsible for the supervision of institutions that are affected by these material model extensions or changes shall work together, in full consultation, to decide whether or not to grant the permission sought in accordance with Article 20 of Regulation (EU) No 575/2013, following the process set out in Articles 3 to 9 of this Regulation.’.

Article 2

This Regulation shall enter into force on 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]

5. Accompanying documents

5.1 Draft cost-benefit analysis

A. Problem identification

The main issue that the EBA is called to address in this draft amending ITS is specifying the joint decision process between the consolidating supervisor and the relevant competent authorities regarding applications for permissions referred to in Article 143(1) and Article 151(9), Article 283, and Article 325az of the Regulation (EU) 575/2013 with a view to facilitating joint decisions. This mandate follows in the footsteps of the previous one, without altering its content and objective. The main novelty stems from the overall revised scope for internal model set out in the Regulation (EU) 575/2013, where the possibility to apply these approaches (Advanced Measurement Approach – AMA) is no longer in place for operational risk.

B. Policy objectives

The goal set out in the mandate is the same as the previous ITS, i.e. to reach maximum possible harmonisation as the way of achieving a level playing field, preventing regulatory arbitrage opportunities, and enhancing supervisory convergence and legal clarity. Moreover, the ITS aims to help the colleges function efficiently and effectively and reduce the compliance burden on the supervisory authorities (in their home and host capacities), and on other stakeholders involved or affected (mainly credit institutions).

C. Baseline scenario

Considering the alignment in objectives between the previous and the new mandate, the Baseline scenario entails maintaining the existing framework (current practice) while adjusting the regulatory reference where necessary, such as to accommodate the revised scope of application of internal models in line with CRR III concerning the AMA for operational risk.

D. Options considered

In addition to the option of applying changes driven by the updated regulation (i.e. maintaining the existing practice set out in the current framework - option 1), it was also considered the necessity of implementing targeted amendments based on practical experience with the ITS application by competent authorities (i.e. adding or removing specific elements from the existing framework based on practical experience - option 2). Competent authorities considered the current framework as robust, capable of ensuring adequate cooperation among them, without highlighting the need for major amendments. Consequently, it was determined that no amendments beyond those reflecting changes in the EU legal framework were necessary (option 1).

E. Cost-Benefit Analysis

Considering the strictly legalistic nature of the changes proposed by the amending ITS (i.e. updating regulatory references), no additional impact is expected from the implementation of the draft ITS.

5.2 Overview of questions for consultation

Question

Q1. Do you consider that the changes proposed in the revised ITS are appropriate and sufficiently clear?