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EBA/2015/D/450

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Request for revised deadlines in the Capital Requirements Regulation (CRR)/ Capital Requirements Directive (CRD) for the delivery of draft technical standards

Dear Mr Guersent

The EBA responded with high commitment to the significant role that the CRD 2013/36/EU (CRDIV) and the CRR (EU)No 575/2013 as well as Directive 2014/59/ ('BRRD') attribute to the EBA.

The EBA unfortunately is not in a position to deliver on all required mandates mainly as a consequence of persistent resource shortages. Under its founding Regulation No 1083/2010, as amended by Regulation 1022/2013, Article 10.2 regarding Regulatory Technical Standards (RTS), and Article 15.2 regarding Implementing Technical Standards (ITS), where draft Technical Standards have not been submitted within deadlines provided in the legislation, the European Commission may request their submission within a new time limit.

For the following mandates, due to be delivered by end of December 2015, the EBA requests submission within new time limits:

- **RTS and ITS on Authorisation of credit institutions.** The EBA is currently working on this mandate given in Article 8 (2) and 8 (2) CRD but given the very comprehensive nature of these technical standards, the EBA currently expects to issue its consultative paper by late Spring and be able to deliver these mandates by end of 2016.
- **ITS on common procedures; forms and templates** for the prudential assessment of cross-border or cross sectorial proposed acquisitions and increases of qualifying holdings in the financial sector. The EBA is currently working on this mandate given in Article 22 (9) CRD and earlier this year published a consultation paper¹. The EBA expects to be able to deliver this mandate by September 2016 where cross-sectoral approaches differ at this stage and ¹a similar mandate of ESMA from MiFid follows a different approach.

¹<https://www.eba.europa.eu/documents/10180/1267841/EBA-CP-2015-20+CP+on+ITS+on+qualifying+holdings.pdf>

- **RTS on market risk assessment methodology.** The EBA is going to start the public consultation on this mandate given in Article 363 (4) CRR but given the very comprehensive nature of this technical standard and existing resource constraints in this highly technical area, the EBA expects to be able to deliver this mandate by September 2016.
- **RTS on the exclusion of transactions with non-financial counterparties established in third countries.** The EBA has consulted on the draft Standards and is currently in the process of finalising the mandate given in Article 382 (5) CRR, but having regard to the priority given to other CVA and market risk products the EBA envisages as possible to deliver this mandate during the first half of 2016.
- **RTS on disclosures on unencumbered assets.** The EBA is currently working on this mandate given in Article 443 CRR. While the Guidelines on asset encumbrance disclosure were published mid-2014, the EBA considered that at least one year of evidence of the disclosure under the Guidelines was necessary before going ahead with the RTS. It is envisaged to start the consultation in the first quarter of 2016 and the EBA could therefore be in a position to finalise this mandate by end of 2016.
- **RTS on the setting of higher Risk Weights and LGDs.** The EBA has been working on this mandate given by Article 124(4)(b) and 164(6) simultaneously with the RTS on Mortgage Lending Value. The EBA earlier this year published a consultation paper². The inter-linkages with the macro-prudential framework make these RTS mandates difficult to complete. The EBA is currently on track to deliver the draft RTS by June 2016.
- **RTS on Risk Weights for specialized lending exposures.** The EBA is currently in the process of finalising this mandate given in Article 153 (9) CRR, which is under the early legal review process as agreed with the Commission. The delay stems solely from such new working arrangements which are hoped to facilitate adoption afterwards from the side of the Commission. This mandate is therefore expected to be delivered during Q1 2016.
- **RTS on Criteria for intragroup inflows and outflows.** The EBA is currently working on these mandates given in Article 422 (9)(10) and 425 (5) (6) CRR and expects to be able to deliver by June 2016.

As you are surely aware, early this year the EBA reviewed the many technical standards related to internal models as emanating from the CRR and in particular credit risk models, given the interlinkages of the various mandates and developments at the Basle Committee. As a result the EBA issued a Discussion Paper on the Future of the IRB Approach in order to clarify the most appropriate sequencing among the changes to be applied to models.

²<https://www.eba.europa.eu/documents/10180/1134425/EBA-CP-2015-12+CP+on+RTS+on+RWs+and+LGD+Values.pdf>

Indeed further to the adoption of the technical standards the implementation of the regulatory products entail high preparation steps from both credit institutions and their supervisors and the EBA has now adopted its decision on how to best sequence the regulatory repair of the models while ensuring a coordinated approach across the EU. The EBA is prepared to issue its Opinion on these matters and addressed to EU competent authorities in January if the G20 Governors and Heads of Supervision (GHOS) confirm the Basle Committee timetable for 2016. As a result of such efforts the optimal way forward in the delivery of the regulatory products to be applied to models requires to therefore request to postpone the deadline to end 2016 for materiality thresholds for past due credit obligations and end of 2017 for the other following mandates :

- **RTS on materiality thresholds for past due credit obligations.** The EBA is currently working on this mandate given in Article 178 (6) CRR and the draft RTS were consulted already in late 2014. The EBA expects to finalise this mandate by September 2016.
- **RTS on permanent partial use and roll-out.** The EBA is no longer working on the mandates given in Article 148 (6), 150(3) and 152 (5) regarding the topic of roll-out and partial use of models. The EBA has finalised and consulted an approach. However it seems counterproductive from a supervisory perspective and costly for the EU banking system to force now institutions to implement models, especially models on so-called low-default exposures, which EBA work has shown to be less suited for modelling and while at the same time the global standard setter is discussing constraints to real use of internal models for certain asset classes. The EBA will continue to monitor the need to deliver this mandate and will make its final considerations in light of the Basel Committee's discussions which are supposed to close by end 2016. The Commission will naturally be informed, once clarity exists on the optimal way forward.
- **RTS on downturn Loss Given Defaults (LGDs).** The EBA is no longer working on the mandate given in Article 181 (3)(a) and 182 (4) (a) CRR. This is a highly technical topic where common understanding of European experts had been difficult to achieve. Despite the EBA having finalised a proposal, ready for consultation, the work has been put on hold due to similar discussions at the Basel Committee level where such European approach could be tabled and considered. The EBA will continue to monitor the optimal timing to deliver this mandate in light of international discussions and the Commission will naturally be informed, once clarity exists on the optimal way forward.
- **RTS on immaterial portfolios for IRB approach.** In light of the prioritisation of other more pressing aspects in the IRB area, the EBA has not been in a position to start working on this mandate given in Article 221(9) CRR.
- **RTS on conditional guarantees.** The EBA is currently not expecting to be able to deliver on this mandate before the CRM framework is reconsidered.

Finally, as you may recall, for a limited number of BRRD mandates timely delivery was not possible, due to the prioritisation and especially the need to use the limited available resources for other more urgent tasks. The delay concerns the Implementing Technical Standards (ITS) on reporting for minimum requirements for own funds and eligible liabilities (MREL -Article 45) – BRRD deadline 3 July 2015. These ITS will provide the reporting format that Resolution Authorities will use to notify the EBA of the MREL they have set. It will become relevant when Resolution Authorities begin to set MREL. The two-month public consultation for these ITS is expected to begin by January 2016.

I would also like to highlight two aspects of the necessary reprioritisation of the EBA work regarding CRR. The EBA is mandated to publish a biannual report on overreliance of ratings in Article 161(3), which due to the substantial resources devoted to the finalisation of the ECAI standards has not been initiated in both 2014 and 2015. The EBA may not be in a position to accomplish these mandates in 2016. Similar considerations apply to the mandate of Article 5 CRA, although this is a joint ESA mandate, where a discussion paper has been previously issued.

In the same vein, regarding the report on the duplication of requirements of derivatives transactions under CRR and Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) and own funds requirements for CCPs under EMIR the EBA was mandated to deliver a joint report with ESMA under Article 515(1) and an EBA report under Article 515(2) by early 2015. In light of the fact that the RTS on non-cleared OTC derivatives will only be delivered in early 2016, the assessment of the mandates would appear premature, just as resource constraints have not allowed starting this work. The EBA may be unable to complete these mandates in 2016.

The EBA is fully committed to deliver its best despite the challenges it faces where the utmost attention remains given to the quality of the single rule book. Our bilateral working methods should remain under scrutiny as now the final EBA delivery date also depends on the length of the early legal review process which we agreed to practice with the Legal Services of the Commission for the expected benefits of the Commission final adoption process. I shall be pleased to exchange with you during the year on the results achieved with such practice while keeping you informed on the execution of our plans for the revision of internal models as regulatory tools in particular.

Yours sincerely

Signed

Andrea Enria

CC: Mario Nava, DG Financial Stability, Services and Capital Markets Union, Director Directorate D
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