



EBA/CP/2014/13

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3 July 2014

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## Consultation Paper

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Draft implementing technical standards on joint decisions on prudential requirements in accordance with Article 20 of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)

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# 1. Responding to this consultation

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The European Banking Authority (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 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 3 October 2014. Please note that comments submitted after this deadline or by 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 in the legal notice section of the EBA website.

## 2. Executive summary

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Article 20(8) of Regulation (EU) No 575/2013 of the CRR mandates the EBA to develop draft implementing technical standards (ITS) to specify the joint decision process to be followed by competent authorities when assessing applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article 363 of this Regulation. The draft ITS set out in detail aspects of the supervisory cooperation in the joint decision process for an initial application, and for the approval of material extensions or changes to internal models.

The main aspects covered by these draft ITS are set out below:

- The possible involvement of third country supervisory authorities: if a group operates in that third country and intends to apply the internal models, the competent authorities of third countries may be invited to contribute to the assessment of the internal approaches,
- The assessment of the completeness of applications: the draft ITS acknowledge that it is important for each of the relevant competent authorities to be involved in this process. As a result, these draft ITS include provisions requiring the consolidating supervisor to forward applications to the relevant competent authorities without undue delay, at all events, within ten (10) days of receipt. The consolidating supervisor and the relevant competent authorities are expected to respond to the applicant with the outcome of their assessment within six weeks of the date of receipt of that application,
- The planning of the joint decision process: this covers the timetable for this process (six months from the date of receipt of the complete application), and the agreement on the division of work between the consolidating supervisor and the relevant competent authorities,
- The competent authorities' contributions to the draft joint decision: this is built on three main elements: i) opinion on granting (or not granting) the permission sought; ii) terms and conditions, if any, to which this permission is subject to; and iii) details of the assessment report, including reasons for the opinion,
- The elements of the joint decision document: these include information about the authorities reaching the joint decision, the institutions to which the joint decision applies, the opinion of the authorities, the date from which the applicant can use the internal model and details of the assessment report supporting the opinion of the competent authorities,
- The process to be followed when a joint decision is not reached: this also covers the need to provide evidence in writing, of the decision taken by the consolidating supervisor and ensuring that this decision is communicated to the applicant and the relevant competent authorities,
- Involvement of the authorities when permission is requested to apply material extensions or changes to internal models that are already approved.

The EBA will consider the responses to the Consultation Paper and any opinion of the Banking Stakeholder Group before finalising these draft ITS, which the EBA then plans to submit to the European Commission by the end of 2014.

The EBA envisages that the cooperation procedures between supervisory authorities as specified in the 'Guidelines on the implementation, validation and assessment of Advanced Measurement (AMA) and Internal Ratings Based (IRB) Approaches' ([GL10](#)) will be repealed with the implementation of this proposed Regulation.

## 3. Background and rationale

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These draft ITS specify the joint decision process to be followed by competent authorities while deciding on whether to grant permission to use of internal models for credit, counterparty, operational, and market risk for the calculation of own funds requirements.

Article 20(8) of the Regulation (EU) No 575/2013 mandates the EBA to develop draft ITS to specify the joint decision process regarding applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article 363, as submitted by an EU parent institution and its subsidiaries (or jointly by the subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company). These applications refer to the permissions to use the IRB approach for credit risk, the internal model method for counterparty risk, the AMA for operational risk and the internal models for market risk.

Under the provisions of Article 20 of the CRR, the consolidating supervisor and the relevant competent authorities responsible for the supervision of group subsidiaries (which intend to make use of these permissions for the calculation of own fund requirements), shall reach a joint decision on whether to grant the permission sought within six months of the date of receipt of a complete application by the consolidating supervisor.

The draft ITS establish important procedures to help the consolidating supervisor and the relevant competent authorities work together while they are performing their assessments and preparing their contributions to the joint decision, aiming to reach a joint decision within six months of the date of receipt of a complete application from the applicant to the consolidating supervisor.

If a group operates in a third country and also intends to apply the internal models for exposures in that third country, the consolidating supervisor may decide to involve the third country supervisory authorities in the assessment of applications. Prior to providing information prepared by competent authorities, the express consent of these authorities is necessary.

The draft ITS specify the process for assessing the completeness of applications. The date of receipt of a complete application marks the start of the six-month period for the competent authorities to reach a joint decision on granting permission to use internal approaches to calculate own fund requirements (in accordance with Part Three of the CRR). The draft ITS acknowledge that it is important for each of the relevant competent authorities to be involved in assessing the completeness of applications. Therefore, the draft ITS include provisions requiring the consolidating supervisor to forward the application to the relevant competent authorities without undue delay and in any case within ten (10) days of receipt. The consolidating supervisor and the relevant competent authorities are expected to respond to the applicant with the outcome of their assessment within six weeks of the date of receipt. If the application is deemed to be complete, the start of the six-month period is considered to start on the date of receipt of the application by the consolidating supervisor, rather than on the date that the assessment of completeness is finalised or its outcome is communicated.

The draft ITS specify aspects of home-host cooperation in developing and organizing the steps of the joint decision process and the timing thereof, reflecting the scope and the complexity of the

application. These draft ITS also cover other aspects of cooperation like division of work and discussion of the resources needed from each competent authority involved.

The contributions of competent authorities to the draft joint decision are built on three main elements: i) opinion on granting or not the permission sought; ii) terms and conditions, if any, to which this permission is subject to; and, iii) details of the assessment report, including reasons for the opinion. This assessment report should cover all aspects of the assessment methodology under which competent authorities permit institutions to use internal models (credit, operational and market risk, as specified in the Regulation currently being developed by the EBA.

The elements of the joint decision document include information on the authorities reaching the joint decision, the institutions to which the joint decision applies, the opinion of the authorities, the date from which the applicant can use the internal model and details of the assessment report supporting the opinion of the competent authorities. These provisions should facilitate fully reasoned joint decisions across the European Union.

The process to be followed when the joint decision is not reached is also included in the draft ITS, underlining the need to provide evidence in writing, of the decision taken by the consolidating supervisor and ensuring that this decision is communicated to the applicant and the relevant competent authorities.

When finalising these draft ITS, the EBA will consider the responses to the Consultation Paper and any opinion of the Banking Stakeholder Group. The EBA envisages submitting these draft ITS to the European Commission by the end of 2014.

## 4. Draft implementing technical standards on joint decisions on prudential requirements

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EUROPEAN COMMISSION

Brussels, **XXX**  
[...](2012) **XXX** draft

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

**of **XXX****

**[...]**

**laying down implementing technical standards to specify the joint decision process referred to in point (a) of Article 20(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, with regard to the application for certain prudential permissions, with a view to facilitating joint decisions**

(text with EEA relevance)

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<sup>1</sup>, and in particular Article 20(8) thereof,

Whereas:

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<sup>1</sup> 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).

- (1) The consolidating supervisor and the relevant competent authorities should assess the completeness of the application, and ensure timely and efficient cooperation between involved authorities while performing that assessment in order to ensure that all involved parties develop a shared understanding on the receipt of a complete application or on the aspects of the application which are considered to be incomplete.
- (2) The consolidating supervisor should confirm to the applicant and the relevant competent authorities the date of receipt of the complete application to ensure clarity on the exact date when the six month period for reaching the joint decision starts and minimise the chances of possible disputes on the mark of this starting point.
- (3) The assessment of completeness of the application should be performed on the basis of the matters which the competent authorities are required to assess when deciding whether to grant the permission sought. This link between the assessment to be performed by the competent authorities and the information expected to be contained in the submitted applications is essential to improve the quality of the applications and ensures consistency across supervisory colleges both of the content of applications and of the assessment of completeness.
- (4) In order to ensure consistent application of the process for reaching a joint decision, it is important that each step is well defined. A clear process also facilitates timely information exchange, proportionate allocation and efficient management of supervisory resources, promotes mutual understanding, develops relationships of trust between supervisory authorities and promotes effective supervision.
- (5) The assessment of completeness of the application should not extend to the assessment of the application that competent authorities perform while developing their opinion on whether to grant the permission. The time allocated to each step of the joint decision process should therefore be proportionate to the complexity and scope of that step, bearing in mind that the time period for reaching a joint decision cannot be extended or suspended.
- (6) The consolidating supervisor should be in a position to assess whether the model for which permission is sought captures the specificities of jurisdictions outside the Union, where the group has exposures to those jurisdictions. In this context, interaction between Union competent authorities and third country supervisors should be promoted in order to enable the former to develop a complete assessment of the performance of the model.
- (7) Timely and realistic planning for the joint decision process is essential. Every competent authority involved should be required to provide the consolidating supervisor with its contribution in the joint decision in a timely and efficient way.
- (8) The steps to be followed for the performance of the assessment and reaching of the joint decision should be established, recognising that some tasks of the process may be performed in parallel and others sequentially.
- (9) To ensure an effective process is established, the consolidating supervisor should have ultimate responsibility for determining the steps to be followed.

- (10) Establishing clear provisions setting up the content of the joint decision document should ensure that joint decisions are fully reasoned and contribute to efficient monitoring of any terms and conditions.
- (11) In order to clarify the process to be followed once the joint decision is reached, provide transparency on the treatment of the outcome of the decision and facilitate appropriate follow-up actions where needed, standards regarding the communication of the joint decision should be established.
- (12) The timeline of the process for reaching a joint decision on the application on material extensions and changes and the division of work between consolidating supervisor and relevant competent authorities should reflect the scope of those material extensions and changes.
- (13) The joint decision process under Article 20 of Regulation (EU) No 575/2013 includes the process to be followed where no joint decision is reached. To ensure uniform conditions of application of this aspect of the process and in particular to ensure the articulation of fully reasoned decisions and to clarify the treatment of any views and reservations expressed by host supervisors, standards should be established covering the timeline for taking decisions in the absence of a joint decision, and their communication.
- (14) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the European Commission;
- (15) 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 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **Subject matter and definitions**

#### *Article 1*

##### *Subject matter*

This Regulation specifies the joint decision process referred to in point (a) of paragraph 1 of Article 20 of Regulation (EU) No 575/2013 with regard to the applications for permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 of that Regulation with a view to facilitating joint decisions.

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<sup>2</sup> 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).

## *Article 2*

### *Definitions*

For the purposes of this Regulation ‘relevant competent authority’ means a competent authority, other than the consolidating supervisor, which is responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed financial holding company in a Member State and which is required to reach a joint decision in accordance with Article 20(2) of Regulation (EU) No 575/2013 on an application referred to in point (a) of Article 20(1) of that Regulation.

## **CHAPTER II**

### **SECTION I**

#### **JOINT DECISION PROCESS**

## *Article 3*

### *Involvement of third country supervisory authorities in the assessment process*

- (1) The consolidating supervisor may decide to involve the third country supervisory authorities in the assessment of applications submitted pursuant to Article 20(1)(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 the third country.

The involvement of a third country supervisory authority shall be subject to confidentiality requirements equivalent to the requirements under Section II of Chapter 1 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council<sup>3</sup> and, where applicable, Articles 54 and 58 of Directive 2004/39/EC of the European Parliament and of the Council<sup>4</sup>.

The equivalence shall be assessed by the consolidating supervisor and all relevant competent authorities.

- (2) Where the consolidating supervisor decides to involve third country supervisory authorities, 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 in the assessment report prepared by the consolidating supervisor;
  - (b) adding as annexes the contributions referred to in point (a) to the assessment report prepared by the consolidating supervisor.

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<sup>3</sup> 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).

<sup>4</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

- (3) Where the consolidating supervisor decides to involve the supervisory authorities of a third country, the consolidating supervisor shall not provide the assessment report prepared by a relevant competent authority to the third country supervisory authorities without the express consent of that relevant competent authority.
- (4) The consolidating supervisor shall keep the relevant competent authorities fully informed on the scope, level and nature of involvement of the third country supervisory authorities in the assessment process.

#### *Article 4*

##### *Completeness of the application*

- (1) Upon receipt of an application for a permission referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) or Article 363 of Regulation (EU) No 575/2013 submitted by an EU parent institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company (the ‘applicant’), the consolidating supervisor shall forward the application to the relevant competent authorities without undue delay, and in any case within ten days.
- (2) The consolidating supervisor and the relevant competent authorities shall assess the completeness of the application within six weeks of receipt by the consolidating supervisor of the application.
- (3) In respect of an application for a permission referred to in Article 143(1), Article 151(4) or (9), Article 312(2) or Article 363 of Regulation (EU) No 575/2013, 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 regulatory technical standards adopted in accordance with Article 144(2), Article 312(4) or Article 363(4) of that Regulation, specifying the assessment methodology competent authorities shall follow in relation to assessing the compliance of the institutions with the requirements to use the IRB Approach or to permit institutions to use the relevant model.
- (4) The relevant competent authorities shall notify their assessment of the completeness of the application to the consolidating supervisor, identifying any elements of the application that are assessed as incomplete or missing.
- (5) Where a relevant competent authority does not provide its assessment of completeness within the period specified in paragraph 2 that competent authority shall be deemed to consider the application complete.
- (6) The consolidating supervisor shall communicate to the applicant any aspects of the application which the consolidating supervisor or any of the relevant competent authorities consider to be incomplete and shall provide to the applicant the opportunity to submit the additional information.
- (7) Where an applicant provides additional information in order to complete an application that has been considered incomplete, the consolidating supervisor shall forward that information to the relevant competent authorities without undue delay, and in any case within ten days. The consolidating supervisor and the relevant

competent authorities shall assess the completeness of the application taking into account the additional information within six weeks of receipt by the consolidating supervisor of that information in accordance with the procedure set out in paragraphs 3 to 6 and this paragraph.

- (8) Where a complete application has previously been assessed as incomplete, the consolidating supervisor and the relevant competent authorities shall treat the six month period referred to in point (a) of Article 20(2) of Regulation (EU) No 575/2013 as having started on the date of receipt by the consolidating supervisor of the information that completed the application.
- (9) Upon an application being assessed as complete, the consolidating supervisor shall inform the applicant and the relevant competent authorities of that fact together with the date of receipt of the complete application or the date of receipt of the information that completed the application.
- (10) Notwithstanding, the assessment of an application as complete, the consolidating supervisor or any of the relevant competent authorities shall request such additional information from the applicant as is necessary for the purposes of assessing the application and reaching a joint decision on the application.

#### *Article 5*

##### *Planning of the joint decision process*

- (1) The consolidating supervisor and the relevant competent authorities shall agree on a timetable of steps to be followed in the joint decision process and on the division of work. In case of disagreement, the consolidating supervisor shall set the timetable after considering the views expressed by the relevant competent authorities. The timetable shall be set within six weeks of receipt of a complete application and upon finalisation shall be forwarded by the consolidating supervisor to the relevant competent authorities.
- (2) The timetable shall include at least the following steps:
  - a) date of receipt of the complete application;
  - b) agreement on the timetable and the division of work between the consolidating supervisor and the relevant competent authorities;
  - c) dialogue between the consolidating supervisor, the relevant competent authorities and the applicant on the details of the application, where this is deemed as necessary by the consolidating supervisor and the relevant competent authorities;
  - d) submission of contributions to the draft joint decision document from the relevant competent authorities to the consolidating supervisor;
  - e) dialogue on submitted contributions between the consolidating supervisor and the relevant competent authorities;
  - f) preparation and submission of the draft joint decision document from the consolidating supervisor to the relevant competent authorities;

- g) dialogue between the consolidating supervisor and the relevant competent authorities on the draft joint decision document;
  - h) submission of the joint decision document by the consolidating supervisor to the relevant competent authorities and the reaching of the joint decision;
  - i) communication of the joint decision to the applicant.
- (3) The timetable shall:
- a) be proportionate to the scope of the application;
  - b) reflect the scope and complexity of each task performed by the relevant competent authorities and the consolidating supervisor, as well as the complexity of the entities to which the joint decision shall apply;
  - c) take into account, to the extent possible, other activities being undertaken by the consolidating supervisor and the relevant competent authorities as reflected in the coordinated supervisory action plan.
- (4) The division of work shall reflect:
- a) the scope and complexity of the application;
  - b) the materiality of the scope of the application for each institution;
  - c) the type and location of the exposures or risks to which the application relates. Where the geographical location of exposures is different from the location at which the exposures and risks are managed, credited or traded, the division of work shall establish any separate responsibilities of the competent authorities in the Member State of the location of the exposures or risks, and of the competent authorities in the Member State of the location at which those exposures or risks are managed, credited or traded;
  - d) the extent to which exposures or risks assumed in a particular jurisdiction contribute to the materiality of changes or extensions of the models when assessed at the consolidated level;
  - e) the ability of each competent authority to execute the necessary tasks to perform an assessment and reach a fully reasoned opinion.
- (5) Where it becomes necessary to update the timetable or the division of work, the consolidating supervisor shall do so in consultation with the relevant competent authorities.

## *Article 6*

### *Contributions to the draft joint decision*

- (1) The competent authorities shall assess the application based on the division of work established in accordance with Article 5(1).
- (2) Each relevant competent authority shall provide to the consolidating supervisor its written contribution to the draft joint decision by the date specified in the timetable referred to in Article 5.

- (3) Contributions shall include at least the following:
- a. an opinion on whether the permission requested is granted, based on the requirements of Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 of Regulation (EU) No 575/2013, as applicable;
  - b. any proposed terms and conditions, including a timetable for their fulfillment;
  - c. a report on the assessment performed (hereinafter “assessment report”), including the reasoning to support the opinion and any proposed terms and conditions.
- (4) The assessment report shall contain assessments relating to the matters which competent authorities are required to assess in accordance with regulatory technical standards adopted in accordance with Article 144(2), Article 151(4) or (9), Article 312(4) or Article 363(4) of Regulation (EU) No 575/2013 specifying the assessment methodology competent authorities shall follow in relation to assessing the compliance of the institutions with the requirements to use the IRB Approach or to permit institutions to use the relevant model, or, in relation to Article 283 of that Regulation, to the matters which the competent authorities are required to assess in order to ensure that the applicant has demonstrated that it complies with the requirements in Section 6 of Chapter 6 of Title II of Part Three of that Regulation.
- (5) A relevant competent authority shall include in the report referred to in point (c) of paragraph 3 any recommendations it has, in addition to the terms and conditions referred to in point (b) of that paragraph, on remedying any deficiencies revealed while assessing the application.

## *Article 7*

### *Preparing the draft joint decision*

- (1) Any contribution referred to in Article 6(2) prepared by the consolidating supervisor or by any of the relevant competent authorities shall be provided by the consolidating supervisor to a relevant competent authority, where that contribution is relevant to the assessment of that relevant competent authority.
  - (2) The consolidating supervisor shall engage in dialogue with the relevant competent authorities, based on the division of work established in accordance with Article 5(1), with a view to preparing a draft joint decision.
  - (3) The consolidating supervisor shall prepare a fully reasoned draft joint decision. The draft joint decision shall set out each of the following items:
    - (a) the names of the consolidating supervisor and the relevant competent authorities involved in the joint decision;
    - (b) the name of the group of institutions and a list of all institutions within the group to which the joint decision relates and applies, together with details of the scope of application of the draft joint decision;
    - (c) the references to the applicable Union and national law relating to the preparation, finalisation and application of the draft joint decision;
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- (d) the date of the draft joint decision and of any material extensions or changes thereto;
  - (e) an opinion on granting the permission requested, based on the requirements of Article 143(1), Article 151(4) or (9), Article 283, Article 312(2), and Article 363 of Regulation (EU) No 575/2013, as applicable, based on the outcome of the assessment report;
  - (f) where the opinion in point (e) is to grant the permission requested, the date from which that permission is granted;
  - (g) a brief description of the results of the assessment in the scope of the group of institutions and the entities within the group of institutions;
  - (h) any terms and conditions that are necessary in order to address any aspects in which the applicant does not meet the requirements referred to in point (e) and to grant the permission requested;
  - (i) any terms and conditions that need to be met before the applicant starts using the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article 363 for the purposes of calculation of own funds requirement, where applicable;
  - (j) the reference date to which points (g) and (i) were assessed;
  - (k) the timeline for the fulfilment of the terms and conditions in accordance with point (h), where applicable;
  - (l) the timeline for implementing the joint decision into respective national permissions, where applicable.
- (4) The consolidating supervisor shall provide the draft joint decision to the relevant competent authorities for the purposes of the dialogue, and to the applicant, where appropriate.
- (5) In the event of disagreement within the time period referred in Article 20(2) of Regulation (EU) No 575/2013, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult EBA. The consolidating supervisor may consult EBA on its own initiative.

#### *Article 8*

##### *Agreement on the joint decision document*

- (1) Following the dialogue with the relevant competent authorities on the draft joint decision, the consolidating supervisor shall revise the draft joint decision as necessary in order to finalise the decision.
- (2) An agreement on the joint decision shall be reached by the consolidating supervisor and all relevant competent authorities.
- (3) The agreement shall be evidenced in writing by representatives of the consolidating supervisor and relevant competent authorities with appropriate authority to commit their respective competent authorities.

#### *Article 9*

*Communication of the joint decision*

- (1) The consolidating supervisor shall communicate the joint decision to the applicant in accordance with Article 20(2) of Regulation (EU) No 575/2013, along with information on the implementation of the joint decision into respective national permissions, where appropriate.
- (2) The consolidating supervisor shall confirm to the relevant competent authorities that it has communicated the joint decision to the applicant.
- (3) The consolidating supervisor and the relevant competent authorities shall, where appropriate, discuss the joint decision with the institutions within their jurisdiction to which it applies, and explain the details of the decision and its application.

**SECTION II**

**DISAGREEMENTS AND DECISIONS TAKEN IN THE ABSENCE OF JOINT  
DECISION**

*Article 10*

*Process in relation to decisions taken in the absence of joint decision*

- (1) In the absence of a joint decision being reached within the time period referred to in Article 20(2) of Regulation (EU) No 575/2013, the decision of the consolidating supervisor shall be evidenced in writing and shall be taken by the later of the following dates:
  - a) the date one month after the expiry of the time period referred to in Article 20(2) of Regulation (EU) No 575/2013, where none of the competent authorities has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010;
  - b) the date one month after the provision of any advice by EBA following a request for consultation by the consolidating supervisor following the expiry of the time period referred to in Article 20(2) of Regulation (EU) No 575/2013;
  - c) the date one month after any decision taken by EBA in accordance with Article 19 of Regulation No (EU) No 1093/2010 relating to the application.
- (2) Where EBA has been consulted, whether prior to or following the expiry of the time period referred to in Article 20(2) of Regulation (EU) No 575/2013, the consolidating supervisor's decision shall include an explanation of any deviations from EBA advice.
- (3) The consolidating supervisor shall communicate its decision to the applicant and to the relevant competent authorities without delay.

*Article 11*

*Drafting decisions taken in the absence of joint decision*

The decision taken by the consolidating supervisor in the absence of a joint decision shall set out all items of Article 7(3), as appropriate.

**SECTION III**  
**MATERIAL MODEL CHANGES**

*Article 12*

*Material extensions and changes*

- (1) Where an application for permission relates to material extensions or changes in accordance with Article 143(3), Article 283, Article 312(2), or Article 363(3) of Regulation (EU) No 575/2013, the joint decision process for granting permission on material extensions and changes shall follow the process set out in Articles 3 to 9 except as stated in paragraphs 2.
- (2) The timetable of the joint decision process for granting permission on material extensions and changes shall:
  - a) reflect the scope of the material extensions and changes;
  - b) be proportionate to the tasks and division of the work between the consolidating supervisor and the relevant competent authorities. In particular, where an application concerns material extension or change which affect only institutions established in particular Member States, the time provided for input from relevant competent authorities in other Member States shall be kept to a minimum.

*Article 13*

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*

*[For the Commission*  
*On behalf of the President*

*[Position]*

## 5. Accompanying documents

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### 5.1 Draft impact assessment

#### 5.1.1 Problem definition

The main issue that the EBA is called to address in these draft ITS is specifying the joint decision process between the consolidating supervisor and the relevant host EEA competent authorities regarding applications for permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article 363 with a view to facilitating joint decisions.

The EBA considers that the goal of these binding technical standards is 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. On the other hand, the draft ITS should 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).

#### 5.1.2 Objectives

The regulatory objective of these draft ITS is to achieve as much harmonisation as possible in the areas described above. To achieve this, the following tasks need to be streamlined:

- assessing the completeness of applications and the home-host cooperation aspect of this process,
- clarity and communication between competent authorities and supervised entities on when the six-month period starts during which the competent authorities should reach a joint decision,
- agreeing a timetable for the joint decision and the elements thereof, taking into account the scope of the application and the division of work among competent authorities,
- details about contributions from the competent authorities to the draft joint decision document and elements of that document to ensure that a fully reasoned joint decision is communicated to the applicant,
- the process to be followed by the consolidating supervisor and the relevant competent authorities for reaching a joint decision on material extensions or changes to internal models that are already approved.

#### 5.1.3 Options considered

After inspecting the problem to identify whether there was a need for an in-depth impact assessment (IA), it was concluded that the specific set of technical standards did not require an IA analysing the technical options. Instead, analysis was restricted to a choice of high-level policy options to determine whether the ITS framework should be:

- option 1: retaining existing practice for the ITS framework, i.e. current practice  $\equiv$  ITS;
- or

- option 2: adding new elements to or excluding elements from existing practice, i.e. current practice  $\neq$  ITS.

#### a. Assessing the completeness of applications

The draft ITS specify how this assessment should be carried out, given that the date of receipt of a complete application marks the start of the six-month period for the competent authorities to reach a joint decision on granting permission to use internal approaches for calculation of own fund requirements in accordance with Part Three of the CRR. These provisions specify home-host cooperation for performing this assessment and for developing a common view on the completeness of applications. They also specify the period available to competent authorities for assessing applications and responding to applicants with their opinion on the completeness of applications. These provisions cover aspects of communication between the consolidating supervisor and the applicant, and between the consolidating supervisor and the relevant host competent authorities.

#### Differences with regard to current practice

At the moment there is no harmonised approach in the European Union on home-host cooperation in assessing the completeness of applications. As a result, there have been cases in which applications were forwarded to the relevant host competent authorities with a delay, or after the consolidating supervisor had already sent the applicant their opinion on the completeness of applications. It is also not clear if there is a common view on the date of receipt of a complete application, and therefore the starting date of the six-month period for reaching a joint decision.

#### b. Joint decision timetable

The draft ITS specify home-host cooperation in developing and organising the joint decision process and the timing thereof, reflecting the scope and complexity of the application. The draft ITS also cover other aspects of cooperation like division of work and discussion about resources needed from each competent authority involved. The timetable proposed covers the main steps in the joint decision process, starting from the date of receipt of the complete application.

#### Differences with regard to current practice

Aspects of home-host cooperation in organising the joint decision process already exist, taking into account the steps needed to reach a joint decision in the period provided for in the Level 1 text. However, it is not clear whether current practice endorses a specific period during which the competent authorities are expected to develop and agree on the joint decision process, as proposed in the draft ITS.

#### c. Contributions to and elements of the joint decision

The draft ITS expand on the provisions relating to the contributions of the relevant host competent authorities and the consolidating supervisor to the draft joint decision document. Apart from the aspects focusing on the process, the draft ITS require these contributions to include three main elements, with the ultimate objective being that the joint decision document produced by the consolidating supervisor will be a fully reasoned joint decision including information both for the group and the entities to which the joint decision applies.

### Differences with regard to current practice

These provisions do not seem to differ from the current regulatory framework and the practice followed by competent authorities; nonetheless, links between aspects of the assessment methodology and elements of the assessment report as set out in these draft ITS are expected to improve the quality and to harmonise the content of the joint decision documents across the European Union.

#### d. Material extensions and changes

The draft ITS cover the process to be followed between the consolidating supervisor and the relevant host competent authorities which supervise entities of the banking group affected by the material extension or change. The draft ITS acknowledge that this is fundamentally a joint decision process and therefore they cover the main aspects of this process in the same way as they do for the initial application. Nonetheless, the draft ITS also reflect the scope of the material extension and change, especially in terms of timing and level of involvement of the competent authorities. Provisions of the draft ITS recognise that the joint decision process for assessing and approving a material extension or change should only be managed by the consolidating supervisor and the host competent authorities affected by that extension or change (this can be a subset of the 'team' of supervisors reaching the initial joint decision).

### Differences with regard to current practice

It seems that the joint decision process for approving material extensions or changes is neither clear nor managed in a harmonised way across the European Union.

#### 5.1.4 Cost-benefit analysis

##### a. Assessment of completeness of applications

###### Costs

The main costs expected to arise from assessing the completeness of applications are as follows:

- i. there may be a tighter time schedule within which the consolidating supervisor needs to process and forward the application to the relevant host competent authorities;
- ii. more efficient management of home-host cooperation may result in time pressure and potentially higher costs in terms of the resources needed to develop a joint opinion on the completeness of applications and inform applicants (through the consolidating supervisor) about the outcome of the assessment;
- iii. there may be a loss of flexibility in terms of the period during which both the application can be forwarded and the applicant can expect to hear whether their application has been assessed as complete;
- iv. some competent authorities believe that the time available for forwarding the application to the host competent authorities and assessing the completeness of applications results in less time being available for actually assessing applications and reaching a joint decision;

- v. further resources may be required from home and host competent authorities to assess what additional information is needed after an initial submission from an applicant and after the period for assessing the application has begun; and
- vi. there may be more documentation submitted by the applicant upfront (just in case this is needed as part of the review); preparing and assessing this documentation will increase the burden on both competent authorities and institutions.

#### Benefits

The provisions of the ITS covering assessing the completeness of the applications are expected to result in the following benefits both for the competent authorities and the supervised entities:

- i. improvements in home-host cooperation ensuring that both the consolidating supervisor and the relevant host competent authorities are appropriately involved in assessing the completeness of applications submitted;
- ii. shortening of the period during which the relevant host competent authorities should receive the application from the consolidating supervisor;
- iii. ensuring that the outcome of the process is clear, both for the relevant competent authorities and the applicant, an outcome which, if positive (application is assessed as being complete), also marks the start of the six-month period for reaching a joint decision;
- iv. protection of the consolidating supervisor against delays in receiving responses from host competent authorities about their assessment of the completeness of the relevant part of applications; and
- v. the assessment of the completeness of applications will be standardised and harmonised across the European Union.

#### b. Joint decision timetable

#### Costs

The provisions of the ITS requiring competent authorities to develop and agree together a timetable for the joint decision process are expected to result in additional costs for the authorities, arising from the time and resources needed for this cooperation.

#### Benefits

The main benefits expected to arise from these provisions of the draft ITS are the following:

- i. appropriate and efficient planning of all steps of the joint decision process at the earliest possible stage, with all relevant competent authorities being able to reflect on the timing specifics; and
- ii. discussions on the division of work and the level of the competent authorities' involvement at this early stage of the process is expected to contribute to an easier joint decision process, avoiding delays or sources of miscommunication. In addition, competent authorities believe that these provisions will also ensure that applicants will have a better understanding of the process, its steps and the various types of interaction between the competent authorities and the applicant that can be planned in advance (e.g. a dialogue between the consolidating supervisor, the relevant competent

authorities and the applicant about the application details, where deemed necessary by the consolidating supervisor and the relevant competent authorities).

#### c. Contributions to and elements of the joint decision

##### Costs and benefits

Considering that based on current practice, the contributions to the joint decision document already meet the three main elements noted in the draft ITS (at least), it is not expected that these provisions will incur significant additional costs. However, the draft ITS also take account of a link between the assessment report and the elements noted in the draft RTS on assessment methodology for credit, market and operational risk. This aspect of the draft ITS is expected to result in additional costs, in terms of resources and the supervisory skills needed to expand on aspects of the assessment report that meet the requirements of the assessment methodology. In addition, competent authorities noted possible costs resulting from the need to update and adjust their national principles and practices covering the preparation of the joint decision or the preparation of contributions to the joint decision (the costs of harmonising these principles).

The following benefits are expected as a result of a link between the contributions to the joint decision and the elements of the assessment methodology: i) the contributions from all relevant competent authorities and the consolidating supervisor will be more homogenous; ii) the quality of these contributions – in terms of structure and substance – is expected to improve; while iii) the joint decision document is expected to contain these elements, which will allow its qualification as a fully reasoned joint decision.

#### d. Material extensions and changes

##### Costs and benefits

Costs from the provisions of the draft ITS may arise as follows. Some competent authorities fear that the draft ITS provisions will result in delays in processing and assessing applications for material extensions and changes, especially when applications are mostly material at local level. (Delays are expected regarding current practice, while no delays are expected beyond the six-month period for reaching the joint decision set out in the Level 1 text.)

The expected benefits are as follows: i) clarity about aspects of the process and which competent authorities need to be involved in assessing and deciding on whether to grant permission for a material extension or change; ii) a more efficient joint decision process; and iii) consistency of these processes among supervisors, and consistency in the initial application process.

#### e. Other costs and benefits

Competent authorities also gave their views on the expected costs linked to the six-month period available to the consolidating supervisor and the relevant competent authorities to reach a joint decision. The fact that the ITS do not endorse practices such as the suspension of this six-month period may have the following effects:

- Supervisors usually ask for additional information, data or details during a validation procedure so any delay in receiving a response from the entities reduces the time available to the competent authorities to complete their assessment and reach the joint decision.

- In addition, each supervisor usually has an internal procedure for reaching an official position, which, when added to the time taken by coordinating supervisors, would reduce the six-month period further.
- As a result, the only plausible option for the supervisor would be to reject the initial application on the basis that it could not be assessed using the information provided, which would result in a higher number of rejections, producing unnecessary delays and additional costs to both entities and supervisors.
- If the main reason for a rejection is the absence of timely action from entities, it is also more likely that the applicant might challenge the outcome of the joint decision. Official appeals from supervised entities imply additional costs for both applicants and supervisors.

In conclusion, a) supervisors may lose some control of the process (due to delays caused by supervised entities); b) there might be a large number of rejections; so that c) higher costs may arise from appeal procedures against the outcome of joint decisions.

However, the period during which the competent authorities are expected to reach a joint decision is a provision of the Level 1 text, which also does not provide for a suspension of that period. Therefore, the costs listed above should not be regarded as costs linked to the draft ITS, but rather as those linked to the Level 1 text.

#### f. Overall impact assessment

EBA staff requested members of the Subgroup on Home host and Colleges ((substructure of EBA working, among other issues, on the development of draft binding technical standards in the area of home-host cooperation and colleges) to provide feedback on the anticipated sources of costs and benefits arising from implementation of these draft ITS and assess the magnitude of costs and benefits for four categories of stakeholders (consolidating supervisor, host supervisor, credit institutions, other stakeholders). The questions address the impact of the following: i) assessment of the completeness of applications; ii) joint decision timetable; iii) contributions to and elements of the joint decision; iv) material extensions and changes; and v) other sources which respondents could specify.

Eighteen responses were received from the following Member States: BE, BG, CZ, DE, EL, ES, HR, HU, IT, LU, NL, NO, PL, PT, RO, SE, SI, and the UK.

Regarding the level of costs and benefits, the individual Member States' responses were transformed into numerical values and weighted appropriately to reflect the influence of each jurisdiction. This then provided a more accurate estimate of the EU-wide impact of the draft ITS.

The aggregation method is described in detail below.

- The qualitative answers on the magnitude of costs and benefits of implementing the draft ITS were transformed into numerical values. The fields 'not completed by the competent authorities who submitted answers' were assigned zero (i.e. the cost/benefit would be zero for the specific stakeholder/source of impact); 'negligible' impact was assigned 1; 'low' impact 2; 'medium' impact 3; and 'high' impact 4.
- The weighted average of the numerical values was then calculated, the weights being the relative size of the country which had submitted answers to the quantitative part of the

questionnaire. The number of seats held by each Member State in the European Parliament was used for the weighting<sup>5</sup>.

- To calculate the overall EU-wide impact, the answers to the questionnaire were grouped as cost-related or benefit-related.
- The net impact was calculated for each question as the difference between the benefit and the cost, also indicating the direction of the net impact, i.e. positive (benefits > costs) or negative (costs > benefits).
- The overall net impact was calculated for each stakeholder. The overall impact for all stakeholders was estimated as the equally-weighted average of the stakeholders' overall net impact figures.
- The numerical values were then transformed into 'levels of magnitude' as follows:
  - negligible to zero < 0.75,
  - 0.75 <= negligible < 1.25,
  - 1.25 <= low to negligible < 1.75,
  - 1.75 <= low < 2.25,
  - 2.25 <= medium to low < 2.75,
  - 2.75 <= medium < 3.25,
  - 3.25 <= high to medium < 3.75, and
  - high >= 3.75

Using this method of aggregation and classification of the EU-wide impact, the implementation of the draft ITS is expected to have the effects shown in the following tables.

**Table 1 Costs and benefits for the consolidating supervisor**

Category	Net impact (costs/benefits)			
	Costs	Benefits	Level	Direction
<b>Overall costs/benefits</b>	<b>2.50</b>	<b>2.51</b>	<b>Negligible to zero</b>	<b>Positive</b>
1. Assessment of completeness of applications	2.38	2.41	Negligible to zero	Positive
2. Joint decision timetable	2.76	2.60	Negligible to zero	Negative
3. Contributions to and elements of the joint decision	2.53	2.75	Negligible to zero	Positive
4. Material extensions and changes	2.39	2.58	Negligible to zero	Positive
5. Other	0.27	0.21	Negligible to zero	Negative

<sup>5</sup> Since Norway does not hold a seat in the European Parliament, the weight of countries with similar population was used (i.e. Finland, Denmark)

**Table 2 Costs and benefits for the host supervisors**

Category	Costs	Benefits	Net impact (costs/benefits)	
			Level	Direction
<b>Overall costs/benefits</b>	<b>2.94</b>	<b>2.93</b>	<b>Negligible to zero</b>	<b>Negative</b>
1. Assessment of completeness of applications	2.62	2.93	Negligible to zero	Positive
2. Joint decision timetable	3.04	2.83	Negligible to zero	Negative
3. Contributions to and elements of the joint decision	2.79	2.97	Negligible to zero	Positive
4. Material extensions and changes	2.72	2.98	Negligible to zero	Positive
5. Other	0.29	3.02	Medium to low	Positive

**Table 3 Costs and benefits for credit institutions**

Category	Costs	Benefits	Net impact (costs/benefits)	
			Level	Direction
<b>Overall costs/benefits</b>	<b>1.25</b>	<b>1.31</b>	<b>Negligible to zero</b>	<b>Positive</b>
1. Assessment of completeness of applications	1.16	1.31	Negligible to zero	Positive
2. Joint decision timetable	0.94	1.15	Negligible to zero	Positive
3. Contributions to and elements of the joint decision	0.91	1.67	Negligible	Positive
4. Material extensions and changes	1.30	1.30	Negligible to zero	Negative
5. Other	0.27	1.33	Negligible	Positive

**Table 4 Costs and benefits for other stakeholders**

Category	Costs	Benefits	Net impact (costs/benefits)	
			Level	Direction
<b>Overall costs/benefits</b>	<b>0.65</b>	<b>0.72</b>	<b>Negligible to zero</b>	<b>Positive</b>

			Net impact (costs/benefits)	
1. Assessment of completeness of applications	0.65	0.72	Negligible to zero	Positive
2. Joint decision timetable	0.61	0.69	Negligible to zero	Positive
3. Contributions to and elements of the joint decision	0.61	0.69	Negligible to zero	Positive
4. Material extensions and changes	0.65	0.72	Negligible to zero	Positive
5. Other	0.23	0.79	Negligible to zero	Positive

## 5.2 Overview of questions for consultation

**Q1: Do you agree with the proposed home-host cooperation process for assessing the completeness of the applications?**

**Q2: Do you have any alternate proposals about the period during which the consolidating supervisor should forward the application to the other relevant competent authorities for assessing completeness, and the period during which the consolidating supervisor should communicate to the applicant the result of this assessment?**

**Q3: Do you have any suggestions about aspects, other than those already covered in Article 5 of the proposed Regulation, which need to be discussed and agreed between the consolidating supervisor and the relevant competent authorities while planning the joint decision process?**

**Q4: Do you have any suggestions about the elements of the joint decision document as per Article 7 to ensure that a fully reasoned joint decision is communicated to the applicant?**

**Q5: Do you have suggestions about any aspects of or details that should be included in the joint decision process of granting permission for material extensions or changes to internal models?**