

EBA FINAL 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(1) of Directive 2013/36/EU (Capital Requirements Directive – CRD)



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1. Executive summary

Article 143(1) of Directive 2013/36/EU (CRD) 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 Union law;

(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) CRD, and on administrative penalties imposed in accordance with Article 65 CRD.

Article 143(3) CRD mandates the EBA 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 contain the EBA proposal in relation to this mandate. This provides detailed templates on information to be disclosed by competent authorities covering the following regulatory topics:

- rules and guidance, with specific templates covering the application of the CRD, guidance for model approval, changes to minimum loss given default values, higher risk weights or stricter criteria for exposures secured by immovable property, slotting criteria, credit risk mitigation, application of Pillar 3, remuneration, waivers for solo supervision, mergers and acquisitions, application of the regulatory and financial reporting; 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.

Under these draft ITS, the templates are to be completed by competent authorities as of 31 December each year and published by the following 31 July.

2. Background and rationale

The role of disclosure is specifically set out in the CRD. Article 143(1) CRD 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 law;
- (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.’

Article 143(2) CRD 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 about 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 should promote convergence of supervisory practices in the Single Market.

Article 144 of Directive 2006/48/EC already required competent authorities to disclose information about their supervisory framework. In order to promote a transparent and efficient framework for such disclosure, the Committee of European Banking Supervisors (CEBS) published its first Guidelines on Supervisory Disclosure in 2005. This framework was intended to make supervisory practices more transparent, and promote the legitimacy and 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.

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 practices¹.

¹<http://www.eba.europa.eu/documents/10180/105237/CEBSGuidelinesonSupervisoryDisclosurerevisedJan.pdf/d70c1f4c-9e0e-48c5-b59b-9d4784e03f10>

These implementing technical standards developed by the EBA pursuant to Article 143(3) CRD develop the guidance provided in the CEBS Guidelines on Supervisory Disclosure by providing a single format, structure, content list and publication date for the information to be disclosed by competent authorities as listed in Article 143(1) CRD. These standards will be part of the single rulebook strengthening regulatory harmonisation in the European Union.

Main features of these draft ITS

These draft ITS are set out in seven articles. Article 1 sets out the subject matter and scope. Article 2 provides the list of forms to be completed by competent authorities 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 CRD. Article 5 provides a list of templates to be completed by competent authorities to disclose aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State. Article 6 lays down the annual publication date of this information and Article 7 sets out 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 CRD, guidance for model approval, changes to minimum loss given default values, higher risk weights or stricter criteria for exposures secured by immovable property, slotting criteria, credit risk mitigation, application of Pillar 3, remuneration, waivers for solo supervision, mergers and acquisitions, application of the regulatory and financial reporting; 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 by the following 31 July.

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3. EBA FINAL draft implementing standards on the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities under Article 143(1) of Directive 2013/36/EU (Capital Requirements Directive – CRD)
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Brussels, **XXX**
[...](2013) **XXX** draft

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

of **XXX**

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

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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

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 firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC², and in particular Article 143(3) thereof,

Whereas:

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 the Union. 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 that effective assessments can be carried out across the range of supervisory responsibilities.

In order to further facilitate this assessment, supervisory information from all competent authorities need to be published in a common format, updated regularly and be made accessible on the EBA website. Given that Article 144 of Directive 2013/36/EU specifies the contents list for certain specific supervisory disclosure requirements, and in order to ensure effective harmonisation of supervisory disclosure, these implementing technical standards are meant to also 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 Article 143 of Directive 2013/36/EU. 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 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 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

² OJ L 176, 27.06.2013, p. 338.

This Regulation is based on the draft implementing technical standards submitted by the EBA to the Commission.

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:

Directive 2013/36/EU;

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 applicable forms laid down in parts 1 to 11 of Annex 1 in accordance with 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 Eight of Regulation (EU) N° 575/2013)	Part 7
Variable elements of remuneration	Part 8
Disclosures on waivers	Part 9
Mergers and acquisitions	Part 10
Regulatory and financial reporting	Part 11

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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 laid down 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 form laid down in Part 1 of 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 applicable form laid down in Parts 2 to 12 of Annex 2 in accordance with following table:

Options and national discretions in Directive 2013/36/EU and Regulation (EU) N° 575/2013	Part 1
Transitional provisions in Regulation (EU) No 575/2013	
Capital ratios (Article 465)	Part 2
Treatment of unrealised losses measured at fair value (Article 467)	Part 3
Treatment of unrealised gains measured at fair value (Article 468)	Part 4
Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 (CET 1) items (Article 471)	Part 5
Introduction of amendments to International Accounting Standard 19 (IAS 19) (Article 473)	Part 6
Deductions from CET 1, Additional Tier 1 (AT 1) and Tier 2 items (Article 478)	Part 7
Recognition in consolidated CET 1 capital of instruments and items that do not qualify as minority interests (Article 479)	Part 8
Recognition in consolidated own funds of minority interests and qualifying AT 1 and Tier 2 capital (Article 480)	Part 9
Additional filters and deductions (Article 481)	Part 10
Determining the limits for grandfathering of items within CET 1, AT 1 and Tier 2 items (Article 486)	Part 11
Exemption from the Internal Rating Based (IRB) treatment for certain categories of equity exposures (Article 495)	Part 12

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 supervisory review and evaluation referred to in Article 97 of Directive 2013/36/EU using the form laid down in Annex 3.

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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 forms laid down in parts 1 to 5 Annex 4 in accordance with the following table:

Data on national financial 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 of the preceding year.

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

[...]

[Choose between the two options, depending on the person who signs.]
On behalf of the President

[...]

[Position]

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ANNEX

[Excel files]

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4. Accompanying documents

4.1 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 of 24 November 2010), before submitting draft implementing technical standards developed by the EBA to the Commission, the EBA is to 'conduct open public consultations' and 'analyse the potential related costs and benefits'. The following section represents an impact assessment (IA) with an overview of findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
2. This section outlines the IA of the format, structure, contents list and annual publication date of the information listed in Article 143(1) CRD.

Problem definition

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

3. In its assessment of the impact of the CRD IV 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, particularly in stressed circumstances when coordination between national supervisors is necessary; and
 - (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 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 draft ITS and objectives

5. These draft ITS will ensure the consistency of the information reported by providing detailed reporting standards. The draft 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 draft ITS have the following two objectives:

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- ▶ To provide a reporting format that is as uniform as possible, to allow meaningful comparisons between supervisory practices between any two Member States and highlight any differences in implementation of the various national discretions.
- ▶ To provide sufficient granularity in the information reported so that users of the information have enough elements to assess institutions' compliance with the CRD.

Impact of the draft 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 draft ITS update the information to be disclosed to take account of the development of CRD IV and the changes introduced by Directive 2013/36/EU. Since the changes made to the template are not very significant, the EBA expects national supervisory authorities to require few additional resources to update the information they are already providing. The resources dedicated to updating the information published on national supervisory practices on a regular basis should therefore not change significantly and should continue to be quite limited.

Benefits

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

4.2 Views of the Banking Stakeholder Group (BSG)

The Banking Stakeholder Group did not comment the Consultation Paper (EBA/CP/2013/27).

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 9 October 2013. Only one response was received. It came from the German Banking Industry Committee represented by German Savings Bank Association and published on the EBA website.

This response suggested including Article 115(2) and Article 116(4) CRD in the list of options and national discretions in Annex 2, Part 1 of the draft ITS. However, these comments were not incorporated in the draft ITS. Firstly, since Article 115(2) CRD mandates the EBA to maintain a publicly available database of all regional governments and local authorities within the Union which relevant competent authorities treat as exposures to their central governments, introducing an additional template on the same topic, to be disclosed by national authorities locally and aggregated by the EBA on its website, would not be relevant. Secondly, the elements covered by Article 116(4) CRD, which are to be dealt with on a case by case basis, are beyond the scope of options and national discretions.

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