
EBA/ITS/2015/07

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EBA final draft Implementing Technical Standards

on the form and content of disclosure of financial support agreements under Article 26 of Directive 2014/59/EU

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1. Executive summary

Chapter III of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms aims to enable cross-border groups to allocate liquidity optimally when the group is in financial distress, on the basis of dedicated financial support agreements. The purpose is to set out a clear, harmonised framework, facilitate group support and enhance legal certainty despite existing legal obstacles, while maintaining adequate safeguards for financial stability, including prudential requirements and public interests such as the resolvability of the entity providing the support, as well as for the interests of the group entities concerned and their respective creditors. Articles 19 and 23 contain various requirements and conditions for group financial support agreements and the provision of support based on these agreements. Article 23 of Directive 2014/59/EU mandates the EBA to develop draft regulatory technical standards (RTS) and to issue guidelines on the various conditions for the provision of financial support that must be satisfied to permit one group entity to provide financial support to another group entity that meets the conditions for early intervention based on a support agreement in accordance with Article 19.

As one important safeguard for groups' shareholders and creditors, Directive 2014/59/EU provides for disclosure of the general terms of a support agreement. The EBA is mandated to develop draft implementing technical standards (ITS) specifying the form and content of this disclosure. The disclosure should be made on the institution's website and include relevant information such as the consideration and repayment modalities while respecting the need for confidentiality of more specific information.

2. Background and rationale

Article 26(2) of Directive 2014/59/EU mandates the EBA to develop draft ITS to specify the form and content of the description of the general terms of a group financial support agreement and the disclosure of the names of the group entities that are party to it.

The draft ITS establish that the disclosure should be made on the institution's website, thereby ensuring the accessibility of the information on support agreements.

To provide all necessary information for shareholders and creditors and any further stakeholders in the entities concerned, the description should include the form the support may take, the maximum amount, the principles for calculation of the consideration for the provision of the support, and a general description of the maturity profile and the maximum term of loans provided as support, of the termination and prepayment rights, and of collateral and margin requirements. This selection also takes into account the principle of proportionality when defining disclosure obligations of institutions and the interest of institutions in keeping sensitive information confidential.

3. Final draft implementing technical standards on the disclosure of group financial support agreements

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

of **XXX**

laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements in accordance with Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of 15 May 2014 of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹ and in particular Article 26(2) thereof,

Whereas:

- (1) Chapter III of Directive 2014/59/EU sets rules for group financial support agreements to provide financial support among a Union parent institution, or an entity referred to in point (c) or (d) of Article 1(1) of Directive 2014/59/EU and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, provided that the entity receiving the support meets the conditions for early intervention. This allows transfers of funding in a situation where a group entity is in severe distress. To make informed investment decisions, creditors and investors need transparency regarding risks and potential obligations resulting from these agreements and the chances of a recovery of the group resulting from the support agreement. Therefore the agreement should be in a form easily accessible to the public, comparable to financial statements.
- (2) The general terms of the group financial support agreement to be disclosed should include relevant information, such as the maximum amount of support, the

¹

OJ L 173, 12.6.2014, p. 190.

principles for calculation of the consideration for the provision of the support, a general description of the maturity profile and the maximum term of loans provided as support. However, the disclosure should respect the need for confidentiality of more specific information.

- (3) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority to the Commission.
- (4) The European Supervisory Authority 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 Council².

HAS ADOPTED THIS REGULATION:

Article 1

Form of disclosure

Each institution that is a party to the group financial support agreement entered into pursuant Article 19 of Directive 2014/59/EU shall make disclosures under this Regulation on its website in a form that ensures accessibility to the public. To the extent the institution discloses financial statements of the group, the disclosure shall be made in the same form as established for the non-quantitative information included in the financial statements.

Article 2

Terms to be disclosed

1. Institutions shall disclose at least the following information:
 - (a) The names of the group entities being a party to the group financial support agreement;
 - (b) the form the support may take;
 - (c) in case of a loan, the purposes for which the capital advanced under the loan may be used;
 - (d) in case of a guarantee, which transactions and which third parties are potentially covered;
 - (e) to which extent obligations to provide group financial support and entitlement to receive group financial support of each of the parties to the group financial support agreement are reciprocal; if the agreement is not

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

fully reciprocal, the information should differentiate between the different parties following the different terms of agreement;

- (f) the limitations of the group financial support for each form of support covered by the financial support agreement;
- (g) the principles for calculation of the consideration for the provision of the group financial support and how they relate to market conditions at the time of the support;
- (h) a general description of the seniority, the maturity profile and the maximum term of any loans provided as support;
- (i) a general description of any further repayment obligations;
- (j) a general description of the circumstances or indicators relating to the receiving entity and the providing entity that trigger the provision of the support;
- (k) a general description of collateral and margin requirements.

Disclosure shall cover the information applicable to the group entity concerned. This includes information on the terms of the agreement relating to other group entities where it may affect that group entity.

Information that is not applicable shall be indicated as 'non-applicable'.

2. In addition, the disclosure shall be accompanied by a statement that the provision of the financial support is subject to the conditions under Article 23 of Directive 2014/59/EU and to the right of the competent authority to prohibit or restrict the provision pursuant to Article 25 Directive 2014/59/EU.

Article 3

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

On behalf of the President
[Position]

4. Accompanying documents

4.1 Cost–benefit analysis/impact assessment

Introduction

Article 26(2) of Directive 2014/59/EU mandates the EBA to develop draft ITS to specify the form and content of the description of the general terms of a group financial support agreement within the meaning of Chapter III of the Directive and the names of the group entities that are party to it.

As per Article 10(1) and 16(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (the EBA Regulation), any draft guidelines and RTS developed by the EBA shall be accompanied by a cost and benefit analysis. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

This annex therefore presents an impact assessment of the policy options considered in these ITS.

Policy background

In the broader interests of financial stability, Directive 2014/59/EU recognises the objective of restoring the financial stability of a banking group as a whole, while maintaining adequate safeguards to avoid destabilising effects on affiliated providing entities. Pursuant to Article 19(4), Member States shall remove any legal impediment in national law to intra-group financial support transactions.

Therefore, Article 23 stipulates a number of conditions that must be satisfied to permit one group entity (a parent, subsidiary or sister company) to provide financial support to another group entity that meets the conditions for early intervention. Competent authorities have to assess the extent to which these conditions are met when deciding whether or not to authorise the provision of support (Article 25). The conditions contain safeguards relevant for the protection of the entity providing the support and its creditors, as well as for the financial stability of the entities and the financial system as a whole, including public interests.

Article 26(1) stipulates that Member States shall ensure that group entities make public whether or not they have entered into a group financial support agreement pursuant to Article 19 and make public a description of the general terms of any such agreement and the names of the group entities that are party to it and update that information at least annually.

Problem identification

The policy objective of Article 26 is to ensure transparency regarding group financial support agreements with the aim of making it possible for shareholders, creditors and other relevant stakeholders with interests in the entities concerned to take informed decisions.

At the same time the principle of proportionality and the legitimate interest of the group entities in keeping sensitive information regarding the group's policy in a crisis situation confidential must be taken into account.

The draft ITS have to balance this objective and the legitimate interest of institutions when selecting the information to be made public.

Options considered

The EBA considered different potential scopes for the information requirement:

Option 1: detailed information on the following elements: (a) the calculation of the consideration for the provision of the support and how they relate to market conditions at the time of the support; (b) the seniority, the maturity profile and the maximum term of loans provided as support; (c) the circumstances or indicators relating to the receiving entity and the providing entity that trigger the provision of the support; and (d) collateral and margin requirements for the provision of support;

Option 2: general description and principles for the elements mentioned above;

Option 3: no disclosure of any information relating to indicators that trigger the provision of the support.

Option 1 would be in conflict with the legitimate interest of the institutions in keeping information confidential. Detailed information on indicators that trigger the provision of the support would run the risk that market confidence would be undermined if, in a specific situation, support were or were not granted when certain signals were perceived in the markets and would reduce the management's and the authorities' flexibility in reaching optimal decisions. Details on the consideration and margin requirements might be business secrets, which also need protection. Therefore, only options where no such details are mandatorily disclosed should be chosen.

On the other hand, elements such as the consideration and the trigger for support are material for the assessment of the economic risk resulting from the provision of support. The principles for the calculation of the consideration are explicitly mentioned under the relevant conditions in Article 19. Therefore, they should be disclosed to stakeholders. Therefore, Option 2 is also preferable to the option not requiring disclosure of this information.

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper, together with the draft RTS and draft guidelines specifying the conditions for the provision of group financial support in one single consultation paper.

The consultation period lasted for three months and ended on 4 January 2014. Four responses were received, of which three were published on the EBA website.

The following table presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2014/30			
<p>Question: Should a description of additional terms be disclosed? Are there any elements that in your view should not be disclosed?</p>	<p>One respondent asked for clarification under Art. 2 of the ITS that the disclosure should also be made without delay following the activation of the group financial support agreement. Furthermore, the respondent required that the consolidating entity be required to disclose an overview of all financial agreements of all entities within one group.</p> <p>Another respondent suggested that information should be disclosed by the providing entities, as it is very relevant for their stakeholders. Information should give shareholders a full overview of the economic situation, in particular of the economic consequences of the decision made by the competent authority.</p> <p>In contrast one respondent does not support the disclosure of any details of group support agreements in public forums.</p>	<p>Disclosure of the agreement with undue delay following the conclusion of the agreement is stipulated in sentence 2 of Art. 2 of the ITS. 'Without delay' is sufficiently specific, as similar terms are used in legal language.</p> <p>The EBA mandate for the ITS does not include an obligation to disclose an overview of all financial support agreements within the group. In the EBA's view, such an overview might have added value and groups should be encouraged by competent authorities to provide one.</p> <p>The providing entity has to disclose the information listed in the ITS, as it needs to be disclosed by all parties to the agreement according to Art. 2 of the ITS. The EBA is of the opinion that the information to be disclosed under Art. 3 of the ITS already includes a wide range of information and will give shareholders a good overview of the economic situation etc.</p> <p>The current text ensures an appropriate balance between legitimate interests in confidentiality and the need to inform shareholders, creditors and investors.</p>	<p>No amendment.</p>

