

EBA/Op/2016/09

12 May 2016

Opinion of the European Banking Authority on the Commission's intention to amend the Final Draft Implementing Technical Standards on benchmarking of internal approaches under Article 78(8) of Directive 2013/36/EU

Introduction and legal basis

Article 78 of Directive 2013/36/EU (the CRD) requires competent authorities to make an annual assessment of the quality of internal approaches used for the calculation of own funds requirements. The same Article requires the EBA to produce a report to assist competent authorities in this assessment. The EBA's report is based on data submitted by institutions as specified in implementing technical standards on benchmarking (ITS). These ITS specify the benchmarking portfolios, templates, definitions and IT solutions that should be applied in the annual benchmarking exercises by institutions using internal approaches for market and credit risk.

On 2 March 2015, the EBA published the draft ITS on benchmarking under Article 78(8) of the CRD and submitted them to the European Commission.

On 13 April 2016, the Commission informed the EBA that, acting in accordance with the procedure set out in the fifth subparagraph of Article 15(1) of Regulation (EU) No 1093/2010¹, it intended to amend the final draft ITS submitted by the EBA.

This EBA opinion is issued pursuant to the fifth subparagraph of Article 15(1) of Regulation (EU) No 1093/2010.

¹ 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).

In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors², the Board of Supervisors has adopted this opinion.

The EBA's opinion on the amendments to the ITS put forward by the Commission

The amendments put forward by the Commission aim to incorporate some points agreed with EBA staff based on experience gained during the 2014-2015 benchmarking exercise, to correct errors or inconsistencies included in the original draft ITS and to clarify the instructions provided in the annexes of the final draft ITS. The EBA fully agrees with the amendments, which improve the quality of the data submitted and ultimately enhance the analysis performed by the EBA and competent authorities.

During the review of the amended ITS, some additional amendments were identified, all of which can be considered minor technical amendments removing inconsistencies in certain parts of the ITS instructions. These additional amendments are highlighted in Annexes 4 and 5 of the amended ITS.

ITS amendments required annually

As required by Article 78 of the CRD, the assessment of institutions' internal approaches ('benchmarking exercise') takes place annually. Since some parts of this exercise are very detailed and include the benchmarking portfolios that banks are required to report, certain parts of the ITS need to be updated annually. For market risk, for instance, it is necessary to update the maturities and features of the instruments included in the portfolios. Even if the same portfolios are used for two consecutive years, some of them might have matured, or might simply present different features due to the passage of time. Regular updates are also necessary for credit risk; the list of counterparties for the low default portfolios needs to be updated and maintained regularly (as a result of insolvencies, mergers, etc.). More generally, all portfolios may need maintenance so that they remain relevant for supervisors.

In practice, the 2017 benchmarking exercise will require an update of the ITS shortly after the adoption and publication of the amended ITS so that institutions have sufficient time to properly prepare for their ITS data submissions. The EBA will make the required changes based on the version adopted by the Commission and will submit these changes soon after the amended ITS are adopted. It will be vital for the success and quality of the benchmarking exercise in 2017 that these changes are then adopted in good time.

² Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (Decision EBA DC 2011/001(Rev4)).

The EBA's considerations on future amendments to the ITS and the CRD

On top of the regular maintenance of the ITS mentioned above, more substantial updates to benchmarking portfolios and parameters are likely to be required in the near future due to the regulatory changes to internal approaches currently being discussed by the BCBS.

In the current legal setting, where all methodological details required to run the annual benchmarking exercise have to be included in the ITS, these regular and frequent updates will take a considerable amount of time to be adopted by the Commission, translated into all official languages of the EU and published in the Official Journal of the EU. Such a process is not suited to running benchmarking exercises efficiently and risks defining benchmarking portfolios which are out of date by the time they are reported by institutions and assessed by competent authorities.

Accordingly, the EBA strongly recommends that benchmarking portfolios and detailed reporting templates and instructions are not adopted as part of Commission Implementing Acts but that powers are given to the EBA to regularly update the portfolios, templates and instructions itself. This recommendation is in line with the opinion published by the EBA in response to a call for advice from the Commission on whether the benchmarking process set out in Article 78 of the CRD was functioning properly and whether any changes were needed to that Article to resolve any potential shortcomings in the process.³

This approach has already been chosen for another set of technical standards which were adopted by the Commission as Implementing Regulation (EU) 2015/79. This Regulation states in its recitals that 'Due to their very nature, validation rules and data point definitions are updated regularly in order to ensure they comply, at all times, with applicable regulatory, analytical and information technology requirements. However, the time presently required to adopt and publish the detailed single data point model and validation rules means that it is not possible to carry out modifications in a sufficiently rapid and timely manner that would ensure permanent uniform supervisory reporting in the Union. Therefore, the detailed data point model laid down in Annex XIV to Implementing Regulation (EU) No 680/2014 and the detailed validation rules laid down in Annex XV to that Regulation should be replaced by stringent qualitative criteria for the single data point model and validation rules which will be published electronically by the European Banking Authority on its website.'

Such an approach would allow the EBA to set the correct benchmarking portfolios for the annual exercises more quickly and thereby ensure that these portfolios are relevant when future benchmarking exercises are carried out, something that is particularly important in view of upcoming regulatory changes for internal approaches (BCBS review of internal approaches for both market and credit risk).

³ Technical advice published by EBA on 2 March 2015 (<http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-04+Technical+Advice+on+benchmarking+pursuant+to+Art+78%289%29.pdf>)

Conclusions

The EBA fully agrees with all the amendments put forward by the Commission and, noting the challenges in the current legal setting, it strongly recommends adopting a different approach to deal with future amendments. A more flexible approach would better meet the need to keep portfolio definitions and reporting requirements up to date and leave enough time for institutions to prepare their systems for data submission.

This opinion will be published on the EBA's website.

Done at London, 11 May 2016

[signed]

Andrea Enria

Chairperson
For the Board of Supervisors