

EBA/CP/2017/14

22 September 2017

Consultation Paper

Draft Implementing technical standards amending Commission Implementing Regulation (EU) No 650/2014 on the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities in accordance with Article 143(3) of Directive 2013/36/EU of the European Parliament and of the Council

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- 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 22.12.2017. Please note that comments submitted after this deadline, or submitted via 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) N° 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 under the Legal notice section of the EBA website.

2. Executive Summary

1. Following the adoption of Capital Requirements Directive (CRD IV) (Directive 2013/36/EU), European Banking Authority (EBA) was mandated to develop Implementing Technical Standards (ITS) on the format, structure, contents list and annual publication date of the information to be disclosed by the competent authorities (CA) in accordance with Article 143 of the CRD IV on:
 - a) The text of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation (Annex I).
 - b) The manner of exercise of the options and discretions (O&Ds) available in Union law (Annex II).
 - c) The general criteria and methodologies they use for the purpose of their supervisory review and evaluation process (SREP) (Annex III).
 - d) 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) of the CRD IV, and of administrative penalties imposed in accordance with Article 65 of the CRD IV (Annex IV).
2. The Implementing Regulation 650/2014 was adopted by the Commission and published in the EU Official Journal on the 4 June 2014¹ replacing the former CEBS Guidelines.
3. Since the adoption of Commission Implementing Regulation (EU) No 650/2014 the EU supervisory landscape has changed and new regulations and guidelines affecting also supervisory disclosure have been enacted. This consultation paper puts forward the draft ITS that amend Commission Implementing Regulation (EU) No 650/2014 in order to take into account those changes to the EU legal framework in particular:
 - a) Liquidity Coverage Ratio (LCR) Delegated Act (LCR DA).
 - b) EBA Guidelines on the Supervisory Review and Evaluation Process (SREP).
 - c) The establishment of the Single Supervisory Mechanism (SSM).
4. The draft amending ITS clarify the level of consolidation and the approach to be taken when aggregating the data. Furthermore the "Instructions to fill in the templates on Supervisory Disclosure" have been updated and are now included as Annex V in the amending ITS.

¹ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_185_R_0001

5. In Annex I, the model approval section has been updated and now includes information for market risk and counterparty credit risk. Annex II has been updated to include the new O&Ds deriving from the LCR Delegated Act. Furthermore, the proposed amendments provide more clarity specifying the differentiation between O&Ds of a permanent nature and O&Ds of a transitional nature. Moreover, the Annex now differentiates between O&Ds whose exercise has been entrusted to CA and O&Ds whose exercise has been entrusted to Member States and separates the information for O&Ds concerning credit institutions and O&Ds concerning investment firms. Annex III has been updated to incorporate EBA's new Guidelines on the SREP. Annex IV proposes to report aggregate information per CA.
6. Moreover, by amending the existing supervisory disclosure framework, it shall enhance the quality and comparability of the reported data by supervisors and provide the market with more information, enhancing transparency in this regard.
7. The amending Commission Implementing Regulation on Supervisory Disclosure once published in the EU Official Journal will amend the current ITS.

3. Background and rationale

8. Article 144 of Directive 2006/48/EC (Capital Requirements Directive) required CAs to disclose information on their supervisory approach. The Committee of European Banking Supervisors (CEBS) published in 2009 its revised Guidelines on Supervisory Disclosure stemming from Directives 2006/48/EC and 2006/49/EC.
9. Following the adoption of the fourth iteration of the Capital Requirements Directive (CRD IV) (Directive 2013/36/EU), EBA was mandated to develop draft ITS on the “format, structure, contents list and annual publication” of the information related to supervisory disclosure in accordance with Article 143 of the CRD IV.
10. More specifically, Article 143(1) of the CRD IV sets out the scope of the disclosure requirements with regard to the information CAs shall publish. This includes:
 - 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 of the Directive and Article 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) of the CRD IV, and of administrative penalties imposed in accordance with Article 65 of the CRD IV.
11. The ITS is accompanying the Single Rulebook and was adopted by the Commission and published in the EU Official Journal on 4 June 2014² replacing the former CEBS Guidelines.
12. EBA also implements Article 143(2) of the CRD IV by making the disclosed information “accessible at a single electronic location”³. This allows not only EBA and the CA but also the

² http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_185_R_0001

³ <http://www.eba.europa.eu/supervisory-convergence/supervisory-disclosure>

general public to compare the supervisory approaches taken in different jurisdictions hence promoting convergence of supervisory practices in the Single Market.

3.2 Main features of the amending ITS

13. The detailed templates are presented in the Annexes of the ITS. They are structured following different regulatory topics: Rules and guidance (Annex I), O&Ds available in Union Law (Annex II), SREP (Annex III) and Aggregate Statistical data (Annex IV). The proposed amendments cover all Annexes of the current ITS and add a new Annex on the "Instructions to fill in the templates on Supervisory Disclosure" (Annex V).
14. One of the key rationales for amending the ITS, is clarifying the level of consolidation and the approach to be taken when aggregating the data. In this regard, the consultation paper moves away from the 'Host Approach' in accordance with the former CEBS guidelines following instead the 'Consolidated Approach' in line with the existing reporting framework with the aim of avoiding additional burden and enhance the comparability of the data.
15. The Commission Implementing Regulation has been updated to reflect the new ECB supervisory competences and the intervening changes to the EU legal framework including new Guidelines, Delegated Acts, etc. Furthermore the "Instructions to fill the templates on Supervisory Disclosure", have been updated following a bottom-up approach, and upgraded from a guidance document to the new Annex V in the amending ITS. This will enhance the transparency of the Commission Implementing Regulation 650/2014, ensure consistency between the templates and the instructions and also reduce the different interpretations between CAs.
16. These templates shall continue to be filled in by CAs by the 31 July of each year with reference to data and information of the preceding year.

3.2.1 Update of the Annex I

17. The template and its structure will in substance stay as they currently are. The proposed amendments aim primarily to correct wrong references and the model approval section (part 2) now also covers the respective information for market risk and counterparty credit risk.

3.2.2 Update of the Annex II

18. According to Article 2 of the Commission Implementing Regulation on Supervisory Disclosure, CAs shall publish information on "the manner of exercising the options and the discretions (O&Ds) available in Union law".
19. In this regard, the EBA published for the first time comprehensive information on the exercise of O&Ds by EU CAs and Member States in December 2014.

20. Since the adoption of the original ITS with Commission Implementing Regulation (EU) 650/2014, the European Commission adopted the LCR Delegated Act⁴ (LCR DA) (Commission Delegated Regulation 2015/61). In this regard, Annex II has been updated to take into account the new O&Ds stemming from the LCR DA.
21. The updated template will bring also more consistency specifying the differentiation between permanent and transitional O&Ds since the Commission Implementing Regulation 650/2014 included several O&Ds which have already expired (e.g. Article 465(2) CRR which is in Part 1 and 2 of the current text of the Annex) or will expire in the coming years (most of them by the end of this year). This shall avoid confusion with regard to their current applicability and their existence.
22. Furthermore, the template now distinguishes the information for credit institutions and the information for investment firms since it is possible to exercise O&Ds for credit institutions and investment firms in a specific jurisdiction in different ways. Similarly, it differentiates between O&Ds whose exercise has been entrusted to CAs and O&Ds whose exercise has been entrusted to Member States (e.g. on large exposures).

3.2.3 Update of the Annex III

23. Annex III has been updated to incorporate EBA's new Guidelines on SREP which introduce the Internal Liquidity Adequacy Assessment Process ('ILAAP').

3.2.4 Update of the Annex IV

24. Annex IV now clarifies the level of consolidation and approach to be taken when aggregating and computing the data. In addition, some other amendments have been made relating to EEA branches and clarification is given with regard to total assets of the banking sector of the Member States (Part 1) together with other minor changes to Part 2 (two missing formulas added and wording related to IRB corrected), Part 4 (footnote added) and Part 5 (replaced the object of the "Member State" with the "CA" and the "country" with the "jurisdiction").

3.2.5 New Annex V

25. The content of the new Annex V is derived from the earlier draft guidance document provided by the EBA to instruct the authorities how to fill the templates on supervisory disclosure. This upgrade improves the legal states of the instructions and improves the harmonization of the reported information.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0061>

4. Draft implementing technical standards

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

of **XXX**

laying down amending implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council

(Text with EEA relevance)

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 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/EC⁵, and in particular Article 143(3) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 650/2014 specifies the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities (CAs) in accordance with Directive 2013/36/EU. Given that the regulatory framework has been supplemented and amended and it is also necessary to specify the distribution of responsibilities within the Single Supervisory Mechanism with regard to Regulation (EU) 1024/2013 supervisory disclosure, then Implementing Regulation (EU) No 650/2014 should be updated accordingly.
- (2) In October 2014 the European Commission adopted the Liquidity Coverage Ratio (LCR) Delegated Act (Delegated Regulation (EU) 2015/61). Therefore, Annex II on options and discretions available in Union Law should be revised adding the options and discretions stemming from the LCR delegated act. This update should also take into account the transitional or permanent nature of those options and discretions and the differentiation between credit institutions and investment firms

⁵ OJ L 176, 27.06.2013, p. 338.



with the aim of providing transparency with regard to the scope of the powers of the CA, acknowledging that Member State and CAs may take different approaches.

- (3) Following the adoption of the EBA Guidelines on Supervisory Review and Evaluation Process (SREP) (EBA/GL/2014/13), Annex III should be revised. In particular, it shall also cover the description of the supervisory approach for the Internal Liquidity Adequacy Assessment Process (ILAAP).
- (4) Further, it is necessary to clarify the level of consolidation with regard to the aggregate statistical data without introducing any additional reporting burden. A consistent methodology for computing the data based on existing data sources should be applied and this methodology should reflect how supervision is carried out by the CAs.
- (5) It is deemed necessary to include the legally binding text in relation to the instructions. In this regard, the new Annex V should enhance the quality of the information to enable a meaningful comparison of the approaches adopted by the CAs.
- (6) Furthermore, given the changes in the supervisory framework it is necessary to update the templates to ensure that the division of responsibilities between the European Central Bank (ECB) and the National Competent Authorities (NCAs) within the Single Supervisory Mechanism (SSM) is appropriately reflected. Accordingly, the NCAs shall publish aggregated data for less significant supervised entities and less significant groups (LSIs) while the ECB shall publish aggregated data in relation to significant supervised entities and significant supervised groups (SIs).
- (7) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (8) 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 Council⁶.
- (9) Implementing Regulation (EU) No 650/2014 should be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation 650/2014 is amended as follows:

1. Article 5 is replaced by the following:

⁶ 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)



‘Competent authorities shall publish the information listed in Article 143(1) of Directive 2013/36/EU at a single electronic location for the first time by 31 July 2014.

Competent Authorities shall update the information referred to in point (d) of Article 143(1) of that Directive on a consolidated basis - as referred to in Part One, Title II, Chapter 2 of the CRR - by 31 July each year based on the position as of 31 December of the preceding year in relation to the institutions subject to their prudential supervision of the reporting authority.

Competent Authorities shall update the information referred to in points (a) to (c) of Article 143(1) of that Directive regularly in relation to the institutions subject to their prudential supervision, and no later than 31 July of each year, unless there is no change in the information published. ‘

2. Annexes I, II, III and IV are replaced in accordance with the text set out in the Annex to this Regulation.
3. Annex V is added in accordance with the text set out in the Annex to this Regulation.

Article 2
Final provisions

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]



ANNEX I

[contains a new version of Annex I of Regulation (EU) No 650/2014]

ANNEX II

[contains a new version of Annex II of Regulation (EU) No 650/2014]

ANNEX III

[contains a new version of Annex III of Regulation (EU) No 650/2014]

ANNEX IV

[contains a new version of Annex IV of Regulation (EU) No 650/2014]

ANNEX V

[contains new Annex V adding instructions on the templates]

Explanatory text for consultation purposes

Annex I to Annex IV already exist in Regulation (EU) No 650/2014 therefore constitute amendment to the existing templates.

The new Annex V represents the instruction document for all the templates (Annex I to Annex IV).

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

In accordance with Article 10 (1) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any ITS developed by the EBA – when submitted to the EU Commission for adoption – shall be accompanied by an Impact Assessment (IA) annex which analyses ‘the potential costs and benefits’. Such annex shall provide the reader with overview of the finding with regard to the problem identification, the options identified to remove the problems and their potential impacts.

This annex outlines the IA in relation to the format, structure, contents list and annual publication date of the information listed in Article 143(1) of CRDIV.

A. Problem identification

In accordance with Article 143(1) of the CRD IV, “Competent Authorities shall publish [...]”. However, since the adoption of this ITS took place before the SSM entered into force the current methodology is not aligned with the scope of CAs.

With this in mind, this also implies some sections seem to be outdated e.g. national financial sector since a CA does not necessarily correspond to a Member State. Moreover, the lack of instructions it revealed to create difficulties to the reporting CAs when fill in the templates.

Similar way, during the application of this ITS some discrepancies were found e.g. wrong references to COREP. Therefore, it is deemed necessary to correct them since in accordance with Article 143(2) of the CRD IV” the information published shall be sufficient to enable a meaningful comparison”. Thus, it might lead to a poor data quality.

B. Policy objectives

An enhancement of the existing current framework of CRD/CRR on O&Ds shall not only provide the necessary information in order to assess the impact of the implementation of these O&Ds in the EU Member States, but also serve as monitoring tool for the exercise of such O&Ds.

Furthermore, clearer guidance on how to fill the template shall streamline the data collection process and provide further harmonisation with regards to the information disclosed by CAs.



C. Baseline scenario

The baseline scenario for this includes the existing ITS on Supervisory Disclosure and the changes to the additional disclosure requirements in the context of the O&Ds introduced by LCR DA. The impact is measured in terms of the additional data required under the proposed amending ITS.

D. Options considered

In the context of this ITS, EBA has considered the following options:

a) Status quo: 'Do nothing'

In case of no further action on this, the issues highlighted in the preceding points will remain over time. Moreover, in accordance with Article 143(2) of the CRD IV "The disclosure shall be accessible at single electronic location". Thus, this might lead to wrong analysis or peer reviews if not corrected. Therefore, this option is disregarded.

b) Alternative: Propose to amend the ITS.

The proposed amendments shall clarify further where insufficient specification have been found, and require additional information from CAs.

E. Cost-Benefit Analysis

Benefits

It is necessary to align for a fair and accurate disclosure in relation to the implementation of the European rules among CAs in order to achieve further harmonisation and to reflect the scope and the split of responsibilities between ECB and NCAs within the banking union. Furthermore, by amending the existing supervisory disclosure framework, it shall enhance the quality of the reported data and improve to market transparency and provide to external participants the ability to monitor supervisory practices. Moreover, a clearer definition will potentially streamline the data collection process limiting the data corrections required.

Costs

No additional costs for firms are envisaged in relation to the implementation of this ITS given the implementation of the amending of this ITS is limited and remains addressed to CAs. With regard to the quantitative data, it relies on existing data sources in line with the principle of proportionality.



Moreover, the frequency of publication of this information is annual. Thus, it is not envisaged to require additional resources, IT-related costs, etc. for the CAs in regard to work derived of this. Thus, the cost of the implementation of the amending ITS, is potentially negligible.



5.2 Overview of questions for consultation

Q01: Do respondents agree to the structure and content of proposed template in Part 1 of Annex IV? Particularly, in relation to the rows related to the total assets values which cover different perimeters for CAs within the SSM (i.e. total assets of the jurisdiction instead of total assets of the supervised institutions).

Q02: Do respondents agree to the structure and content of templates and instructions as proposed in Annexes I to V? If not, would respondents have substantiated reasons for amending or not including a particular data item?