

EBA/Op/2022/11

17 October 2022

Opinion of the European Banking Authority

on the European Commission's amendments relating to the final draft Implementing Technical Standards on prudential disclosures on ESG risks in accordance with Article 449a CRR

Introduction and legal basis

The European Banking Authority's (EBA) competence to deliver an opinion is based on the fourth subparagraph of Article 15(1) of Regulation (EU) No 1093/2010¹ ('EBA Regulation'), as the disclosure of information on environmental, social and governance risks by large institutions which have issued securities that are admitted to trading on a regulated market of any Member State, under Article 449a of Regulation (EU) No. 575/2013² ('Capital Requirements Regulation or CRR') is an area of competence of the EBA which has been mandated to develop draft implementing technical standards on this topic.

In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors³, the Board of Supervisors has adopted this opinion which is addressed to the European Commission.

General comments

1. On 20 January 2022, EBA submitted for endorsement to the European Commission the final draft implementing technical standards ('ITS') on prudential disclosures of environmental, social and governance risks ('ESG risks') in accordance with Article 449a of CRR.

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)

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012

³ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307), amended by EBA/DC/2021/392 of 29.05.2021 and EBA/DC/451 of 21 June 2022

The draft ITS put forward tables, templates and associated instructions that specify the requirement in Article 449a of CRR to disclose prudential information on ESG risks, including transition and physical risk, addressed to large institutions with securities traded on a regulated market of any Member State.

2. With its letter of 31st of August 2022, the European Commission informed the EBA of its intention to endorse the draft ITS with amendments and submitted to the EBA a modified version.
3. The European Commission has communicated its intention to amend the draft ITS presented by the EBA. The letter details two substantive changes and numerous rewordings to the legal drafting, editorial changes, as well as some additional clarifications on the recitals and the text.
4. With regard to the amendments envisaged by the European Commission which are of a substantive nature, the EBA considers that they change the draft ITS in a significant manner from a policy perspective and therefore warrant a formal opinion as set out in Article 15 of the EBA Regulation. The EBA is of the view that while the original text proposed by the EBA and submitted to the European Commission would better specify and reflect the terms of the disclosure requirements and transparency needs, the text as amended by the European Commission, despite the substantive nature of the changes, still preserve the objective of providing a comprehensive and meaningful picture to stakeholders regarding institutions' risk management and prudential disclosures on ESG risks, covering information from different types of counterparties, not only large corporates, and households, but also Small and Medium Enterprises (SMEs) and other corporates not subject to the disclosure obligations under the Non-Financial Reporting Directive⁴ (NFRD) . Consequently, the EBA is not expressing strong concerns in terms of the proposed amendments, however the EBA would like to provide some clarifications that are outlined in the section 'Specific comments' below.
5. The EBA also agrees with the remaining changes summarised in the subsection 'Non-substantive changes', due to their nature as non-substantive and given their usefulness in clarifying the text.

Specific comments

Substantive changes: amendments to the drafting of Article 18a(2) with regard to the disclosure of quantitative information on mitigating actions and exposures on climate-change-related risks associated with economic activities that qualify as environmentally sustainable towards SMEs and other non-NFRD corporate counterparties.

⁴ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

6. In the draft ITS submitted by the EBA on 20 January 2022, it has been proposed that institutions ‘shall’ disclose on a ‘best effort basis’ quantitative information on mitigating actions and exposures on climate-change-related risks associated with economic activities that qualify as environmentally sustainable towards SMEs and other non-NFRD corporate counterparties. This provision aimed at providing a comprehensive and meaningful picture to stakeholders in terms of institutions’ risk management and prudential disclosures on ESG risks and related mitigating actions with all types of counterparties, not only large corporates and households but also smaller corporates, including SMEs.
7. The European Commission has proposed amendments to the wording of this article to emphasize that institutions ‘may’ choose to disclose this information. The EBA notes that the new proposed wording aims at distinguishing the information which will be used for the computation of the Banking Book Taxonomy Alignment Ratio (BTAR) from the Green Asset Ratio (GAR) disclosure requirements by emphasizing the voluntary nature of the former.
8. While the EBA acknowledges the importance of proportionality, as highlighted by the European Commission, the EBA also notes that the aim of the BTAR information is to prevent asymmetric treatment of exposures towards counterparties which may raise similar level of riskiness to the institution even if they are not subject to NFRD disclosure obligations. The BTAR information was included in the draft ITS as a compromise to ensure maximum alignment with the Commission Delegated Regulation (EU) 2021/2178 ⁵(COM Delegated Act) as far as the disclosures common to both regulations are concerned, that is, the GAR, while ensuring that relevant information including all counterparties that may drive relevant risks is disclosed, in line with the Pillar 3 objectives in terms of meaningfulness, comprehensiveness, consistency and comparability of information. Therefore, the EBA welcomes that the disclosure of the BTAR, and the related templates and instructions are kept in the draft ITS. Moreover, while the EBA would favour the original wording asking institutions to disclose this information on a best effort basis, EBA accepts the amendments proposed by the European Commission.

Substantive changes: amendments to the drafting of Article 18a(2) with regard to the calculation of the banking-book taxonomy aligned exposures towards SMEs and other non-NFRD corporate counterparties based on the available information received by these counterparties.

⁵ Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmental sustainable economic activities, and specifying the methodology to comply with that disclosure obligation

9. In the draft ITS submitted by the EBA it was proposed that where the counterparty is not subject to disclosures under Article 8 of Regulation (EU) 2020/852⁶, for the calculation of the percentage of taxonomy-aligned exposures, institutions shall, on a best effort basis, collect information from their counterparties on a bilateral basis through the loan origination process, as well as regular credit review and monitoring process.
10. The European Commission has proposed amendments to the wording of this article to emphasize that the collection of the information from the counterparties will be on a 'voluntary basis' and that institutions should also inform the counterparties about the voluntary nature of this request of information. This would mean that the counterparties are not required to provide such information to institutions, but they may do it on a voluntary basis.
11. The EBA acknowledges the importance to introduce further proportionality in the cases of reduced availability of data. At the same time, the EBA also notes that institutions should make every effort to collect the information that is relevant for them and for the management of their risks, including sustainability information, as specified in the EBA Guidelines on Loan Origination and Monitoring⁷. Therefore, while favouring the original wording as submitted to the European Commission, the EBA understands and accepts the amendments proposed in this point on the basis of enhanced proportionality, and considering that these amendments may be reviewed at a later stage, depending on the evolution of other regulations and products, notably the COM Delegated Act. When accepting these amendments, the EBA has also taken into consideration that the objectives of the draft ITS as expressed at the beginning of this opinion are preserved, and that institutions should still be able, and encouraged, to request this information from the relevant counterparties even if it is on a voluntary basis, and, ultimately, to calculate the BTAR by using estimates or proxies, and to provide further explanations in the narrative on the unavailability of information

Non-substantive changes

12. Drafting amendments: The European Commission has also provided several drafting amendments, some of which are clarifications of instructions seeking better alignment with the COM Delegated Act regarding the GAR instructions, and proposed to move some definitions from the content of the articles to the annex II of the draft ITS to ease the reading of the legal text. The EBA considers that the changes in drafting do not imply a change in policy and represent non-substantive changes.

Conclusions:

⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

⁷ Guidelines on Loan Origination and Monitoring (EBA/GL/2020/06) of 29 May 2020

For the reasons above, the EBA has accepted the substantive amendments to the draft ITS and also the remaining changes on other parts, that are not considered substantive. The EBA submits the draft ITS to the European Commission in the form set out in the Annex.

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

Done at Paris, 17 October 2022

[Signed]

José Manuel Campa

Chairperson

For the Board of Supervisors