



EBA consultation paper on draft Regulatory Technical Standards and Implementing Technical Standards on the authorisation of credit institutions

Public hearing, 12 December 2016

Background

- In order to further the achievement of the internal market from the point of view of the freedom of establishment in the field of credit institutions and to ensure a level playing field, Directive 2013/36/EU (“CRD”) foresees the harmonisation of certain conditions relevant to the authorisation of credit institutions.
- Thus, pursuant to Article 8(2) CRD, EBA is required to develop Regulatory Technical Standards (“RTS”) to specify:
 - the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10 CRD;
 - the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14 CRD; and
 - obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as referred to in Article 14 CRD.
- Furthermore, pursuant to Article 8(3) CRD, EBA shall develop draft Implementing Technical Standards (“ITS”) on standard forms, templates and procedures for the provision of the information in the application for the authorisation of credit institutions.
- The Consultation Paper dated 8 November 2016 constitutes the EBA’s proposal to address these mandates.

Outline of the RTS

- The bulk of the RTS deals with the information to be provided for the authorisation of credit institutions.
- The topic is vast and the RTS aim to strike the right balance by ensuring that the requirements are sufficient but not overbroad.
- In addition, the RTS take into account the different authorisation processes being used in the various Member States and seek to ensure that the list of required information can be applied regardless of the specific scheme of authorisation being used in a given Member State. As such, where a two-step authorisation process is used (consisting of an initial authorisation to set up a credit institution and a second authorisation to commence activities as credit institution) the list set out in the RTS should cover the information to be provided under both stages of the process.
- In developing the RTS, the EBA took into account certain regulatory products which are being developed in parallel, in particular the draft EBA, ESMA and EIOPA Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector and the draft Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU.

RTS: information to be provided (1)

- The information to be provided for the authorisation of credit institutions covers the following main topics:
 - presentation and history of the applicant credit institution;
 - ▶ the information to be provided under this heading includes the identification details of the applicant credit institution, its constitutional documents, details of its existing licences, significant matters such as insolvency proceedings and adverse judgments, as well as application fees;
 - the scope of authorisation;
 - ▶ the application should include information on the activities to be carried out by the applicant credit institution and its membership to a recognised deposit guarantee scheme;
 - own funds;
 - ▶ in addition to evidence of the applicant credit institution's issued capital, paid-up capital and issued capital which is not yet paid up, information should be provided on the funding sources, together with an assessment of the adequacy of internal capital at authorisation and through a severe but plausible stress period of at least three years;
 - shareholders and members with qualifying holdings;
 - ▶ the list of information to be provided in this respect is largely drawn from the draft Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. The requirements distinguish between natural and legal persons and include information on the person holding the participation, as well as the specific sources of funding of the participation;

RTS: information to be provided (2)

- the largest shareholders and persons with close links;
 - ▶ should no person have a qualifying holding in the applicant credit institution, information will need to be provided in respect of the 20 largest shareholders. Such information is a sub-set of the information to be provided for shareholders with qualifying holdings; this takes into account the reduced influence of shareholders with no qualifying holding. In addition, information should be provided on the persons with close links to the applicant credit institution;
- the members of the management body, the heads of internal control function and the chief finance officer;
 - ▶ in developing the list of information to be provided under this heading, the EBA took into account the draft Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders;
 - ▶ one of the points on which the EBA is consulting is whether the assessment of the applicant credit institution's management should cover, in addition to the members of the management body, the heads of internal control function and chief financial officer, as currently foreseen in the draft RTS, generally the members of senior management or another set of officers;

RTS: information to be provided (3)

- the programme of operations, the auditors, the organisational structure and internal control systems;
 - ▶ the information to be provided should include a programme of initial operations for at least the first three years, the details of the applicant credit institution's auditors and the organisational structure and internal control function of the applicant credit institution;
- financial and recovery information;
 - ▶ the requirements include forecast information on the applicant credit institution on a base case and stress scenario basis, including forecasts for the first three years, the financial statements of the applicant credit institution for the previous three financial years where it has been in operation, details of guarantees and security interests granted or expected to be granted and of the indebtedness incurred or expected to be incurred, as well as a number of frameworks and policies of the applicant credit institution; and
- internal control framework and infrastructure
 - ▶ information should be provided on the internal organisation of the compliance function, risk management function and internal audit function, including copies of various policies and plans of the applicant credit institution, such as the internal audit policy. Information will also need to be provided on matters such as outsourcing and the applicant credit institution's IT function.

RTS: flexibility

- The RTS recognise that a measure of flexibility might be needed, so as to ensure that the requirements can be calibrated to the nature of the application and thereby avoid a situation in which the competent authority is not permitted to require information which is needed to assess the application. An additional reason for this approach flows from the provisions of Article 8(1) CRD, which specifies that Member States are mandated to lay down the requirements for the authorisation of credit institutions. The RTS seek to strike a balance between these considerations and the need to ensure that the objective of a unified set of information requirements should not be jeopardised.
- Considering this, the RTS provide flexibility along the following lines:
 - Article 11(1) sets out conditions for requiring information which is additional to that which is set out in the RTS. The conditions are that the information is necessary to verify whether all requirements for authorisation laid down by the Member State and notified to the EBA pursuant to Article 8(1) CRD have been satisfied, the information is proportionate and relevant for the purposes of the authorisation assessment and it does not duplicate in substance the information requirements set out in the RTS; and
 - Article 11(2) specifies that information need not be provided if such information:
 - ▶ is already held by the competent authority, provided that such information remains true, accurate, complete and up to date and is certified as being so by the applicant;
 - ▶ is information which is set out in certain defined articles of the RTS and is solely relevant for activities the credit institution will not be carrying out; or
 - ▶ reflects a requirement waived in respect of the applicant credit institution by the competent authority pursuant to Article 21 CRD dealing with credit institutions permanently affiliated to a central body.

RTS: flexibility (2)

- In addition, the Consultation Paper includes a question on whether additional flexibility should be provided by permitting information to be submitted in a sequenced manner.
- The sequencing process, as described in the Consultation Paper, could be structured along the lines of a streamlined application with fewer requirements at the initial stage than currently foreseen in the draft RTS (the slimmed down requirements for this authorisation being also provided in the technical standards), the granting of an authorisation subject to meaningful restrictions, such as a low overall cap for the amount of deposits the new credit institution might take, the fulfilment by the new credit institution of all remaining requirements over a set period of time and the lifting of the existing restrictions on the authorisation once all outstanding requirements have been satisfied or, alternatively, revoking the authorisation automatically after a period of time.
- The EBA is keen to understand whether the market considers such an approach, as well as the contemplated process and safeguards, to be useful and appropriate.

RTS: requirements applicable to persons having qualifying holdings

- The second limb of the mandate set out in Article 8(1) CRD deals with the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14 CRD.
- In addressing this part of the mandate, EBA's reasoning was that there appears to be no good reason to submit shareholders with qualifying holdings to a different assessment where they acquire their participation within the context of the initial authorisation of a credit institution, as opposed to an acquisition after authorisation. This is reinforced by the provisions of Article 14(2) CRD, which refers back to the criteria in Article 23(1) CRD (being the assessment criteria for acquisitions of qualifying holdings).
- As such, the requirements set out in the RTS closely mirror the assessment criteria applicable to acquisitions of qualifying holdings, as specified in Article 23(1) CRD.

RTS: obstacles which may prevent the effective exercise of the supervisory functions

- The final limb of the mandate in Article 8(1) CRD covers the obstacles which may prevent the effective exercise of the supervisory functions of the competent authority, as referred to in Article 14 CRD, which makes reference to the close links between the credit institution and other natural or legal persons and the effect of such links.
- The EBA does not believe that setting out a comprehensive list of such obstacles is achievable or helpful. The draft RTS do, however, set out a list of matters which should be considered, including:
 - the influence of the nature of the close links that exist or will, following the granting of the authorisation, exist between the credit institution and other natural or legal persons, including politically exposed persons;
 - the interactions of the laws, regulations or administrative provisions of a third country governing those natural or legal persons with which the credit institution has or will, following the granting of the authorisation, have close links, including the difficulties involved in the enforcement of those laws, regulations or administrative provisions or in obtaining information from the authorities in such third countries or from such persons;
 - the possibility of exchanging information with the authority, if any, supervising the persons having close links with the credit institution;
 - the complexity and transparency of the structure of the group of the applicant credit institution or of the person or persons having such close links;
 - the geographical location of the members of the group of the applicant credit institution or of the person or persons having such close links; and
 - the activities performed or to be performed by the members of the group of the applicant credit institution or of the person or persons having such close links.

ITS: Outline

- The ITS set out a comprehensive form for the submission of the information required under the RTS. The form closely mirrors the contents of the RTS and information may be provided either in the body of the form or in annexes.
- The ITS also cover the manner in which the application should be submitted and include a mechanism for dealing with the assessment of the completeness of the application.
- Both the RTS and the ITS are expressed to apply from the date which is six months from their entry into force. This is meant to ensure that the market participants and the competent authorities have sufficient time to acquaint themselves with the requirements of the technical standards.

Questions for the public consultation

- Eight questions were put forward in the consultation paper, as follows:
 - do you have any general comments on the draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU or on the draft Implementing Technical Standards under Article 8(3) of Directive 2013/36/EU?
 - do you have any comments on the proposed list of information to be provided for the authorisation of credit institutions?
 - do you have any comments on the proposed requirements applicable to shareholders and members with qualifying holdings of credit institutions?
 - do you have any comments on the proposed list of obstacles which may prevent the effective exercise of supervisory powers?
 - do you have any comments on the procedure set out in the draft ITS?
 - do you have any comments on the draft application form for authorisation as a credit institution?
 - regarding the assessment of the credit institution's management, do you believe that, in addition to the members of the management body, information should be provided in respect of (i) the heads of internal control function and chief financial officer, (ii) generally in respect of members of senior management or (iii) in respect of another set of officers (if so, please specify which ones)?
 - do you believe that further flexibility along the lines of the sequencing process described in the explanatory box at the end of Article 11 of the RTS should be provided for? If so, do you consider that the sequencing process as described is suitable or would you propose a different approach?

Any questions or comments?



EUROPEAN BANKING AUTHORITY

Floor 46, One Canada Square, London E14 5AA

Tel: +44 207 382 1776

Fax: +44 207 382 1771

E-mail: info@eba.europa.eu

<http://www.eba.europa.eu>