

EBA/ITS/2018/03

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Final Report

Draft implementing technical standards amending Commission Implementing Regulation (EU) No650/2014 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. Executive summary

Following the adoption of the Capital Requirements Directive (CRD IV) (Directive 2013/36/EU), the 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 (CAs) 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).

Since the adoption of Commission Implementing Regulation (EU) No 650/2014, the EU supervisory landscape has changed and new regulations and guidelines that affect supervisory disclosure have been enacted. This 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).

The draft amending ITS clarify the level of consolidation and the approach to be taken when aggregating the data. Furthermore, the instructions for filling in the templates on supervisory disclosure have been updated and are now included as Annex V to the amending ITS.

In Annex I, the model approval section has been updated and now includes information on market risk and counterparty credit risk. Annex II has been updated to include the new O&Ds deriving from the LCR DA. Furthermore, the proposed amendments provide more clarity regarding which O&Ds are of a permanent nature and which are of a transitional nature. Moreover, the annex now differentiates between O&Ds whose exercise has been entrusted to CAs and O&Ds whose exercise

has been entrusted to Member States, and it separates the information on O&Ds concerning credit institutions and O&Ds concerning investment firms. Annex III has been updated to incorporate the EBA's new Guidelines on SREP. Annex IV proposes to report aggregate information per CA. Annex V has been introduced to implement binding instructions for filling in the templates of Annexes I to IV.

Moreover, by amending the existing supervisory disclosure framework, it shall enhance the quality and comparability of the data reported by supervisors and provide the market with more information, increasing transparency in this regard.

2. Background and rationale

1. Article 144 of Directive 2006/48/EC (Capital Requirements Directive) required CAs to disclose information on their supervisory approach. In 2009, the Committee of European Banking Supervisors (CEBS) published its revised Guidelines on Supervisory Disclosure stemming from Directives 2006/48/EC and 2006/49/EC.
2. Following the adoption of the fourth iteration of CRD IV, the 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 CRD IV.
3. More specifically, Article 143(1) 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 CRD IV;
 - d) without prejudice to the provisions laid down in Title VII, Chapter 1 of the Directive and Articles 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) CRD IV, and of administrative penalties imposed in accordance with Article 65 CRD IV.
4. The ITS accompany the Single Rulebook and were adopted by the Commission and published in the EU Official Journal on 4 June 2014¹, replacing the former CEBS Guidelines.
5. The EBA, in the light of its mandate to promote the convergence of supervisory practices in the Single Market, facilitates the comparison of the supervisory approaches taken in different jurisdictions by making the information disclosed by CAs in accordance with Article 143(2) CRD IV available on its website².

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

² <http://www.eba.europa.eu/supervisory-convergence/supervisory-disclosure>.

2.1 Main features of the amending ITS

6. The detailed templates are presented in the annexes to 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 to the current ITS and add a new annex on the instructions for filling in the templates on supervisory disclosure (Annex V).
7. One of the key rationales for amending the ITS is clarifying the level of consolidation of the information to be included and the approach to be taken when aggregating the data. In this regard, the amending ITS move 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 burdens and increasing the comparability of the data.
8. Furthermore, the instructions for filling in the templates on supervisory disclosure have been updated following a bottom-up approach and have been upgraded from a guidance document to the new Annex V to the amending ITS. This will enhance the transparency of Commission Implementing Regulation (EU) No 650/2014, ensure consistency between the templates and the instructions, and reduce the occurrence of different interpretations between CAs.
9. Finally, as a result of the European Central Bank (ECB) now being the CA responsible for prudential supervision of all credit institutions in the Member States participating in the Single Supervisory Mechanism (SSM)³ and following the framework for cooperation within the SSM⁴, the aggregated statistical data to be disclosed in accordance in Article 143(1)(d) CRD IV
 - a) will be published by the ECB in relation to significant supervised entities for which it carries out direct supervision;
 - b) will be published by the national competent authorities (NCAs) participating in the SSM in relation to less significant supervised entities.
10. These templates shall continue to be filled in by CAs by 31 July of each year with reference to data and information for the preceding year.

2.1.2 Update of Annex I

11. The template and its structure will in substance stay in their current form. The proposed amendments aim primarily to correct references, and the model approval section (Part 2) now also covers the respective information for market risk and counterparty credit risk.

³ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287/63, 29.10.2013.

⁴ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation), OJ L 141/1, 14.5.2014.

2.1.3 Update of Annex II

12. 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'.
13. In this regard, in December 2014, the EBA published for the first time comprehensive information on the exercise of O&Ds by EU CAs and Member States.
14. Since the adoption of the original ITS with Commission Implementing Regulation (EU) No 650/2014, the European Commission has adopted the LCR DA⁵ (Commission Delegated Regulation (EU) 2015/61). In this regard, Annex II has been updated to take into account the new O&Ds stemming from the LCR DA.
15. The updated template will also provide more clarity, specifying which O&Ds are permanent and which transitional, since Commission Implementing Regulation (EU) No 650/2014 included several O&Ds that have expired (e.g. Article 465(2) of the Capital Requirements Regulation (CRR), which is in Parts 1 and 2 of the current text of the annex) or will expire in the coming years (most by the end of 2018). This shall avoid confusion with regard to their current applicability and their existence.
16. Furthermore, the template now distinguishes between 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).

2.1.4 Update of Annex III

17. Annex III has been updated to incorporate the EBA's new Guidelines on SREP, which introduce the internal liquidity adequacy assessment process (ILAAP).

2.1.5 Update of Annex IV

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

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0061>

2.1.6 New Annex V

19. The content of the new Annex V is derived from the earlier draft guidance document provided by the EBA to instruct the authorities on how to fill in the templates on supervisory disclosure. This upgrade improves the legal status of the instructions and will increase the harmonisation of the information reported.

2.2 Next steps

20. The draft ITS will be submitted to the Commission for endorsement, following which they will be published in the *Official Journal of the European Union*.

3. 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/EC⁶, 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 in accordance with Directive 2013/36/EU. The disclosure published by competent authorities in accordance with that regulation should be updated in order to ensure consistency with later changes and amendments to the applicable framework for prudential supervision of institutions.
- (2) In October 2014, the European Commission adopted the Liquidity Coverage Ratio (LCR) Delegated Act (Delegated Regulation (EU) 2015/61). Following that adoption, Annex II to Regulation (EU) No 650/2014 on options and discretions available in Union Law to Member States and competent authorities should be revised, adding the options and discretions stemming from the LCR Delegated Act. This should also take into account the transitional or permanent nature of those options and discretions and differentiation between credit institutions and investment

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OJ L 176, 27.06.2013, p. 338.

- firms with the aim of providing transparency with regard to the scope of the powers of the competent authority and of the Member States.
- (3) Following the adoption of the EBA Guidelines on the supervisory review and evaluation process (SREP) (EBA/GL/2014/13), Annex III to Commission Implementing Regulation (EU) No 650/2014 should be revised to cover the description of the supervisory approach to the internal liquidity adequacy assessment process (ILAAP).
 - (4) The format and contents of the disclosure determined by Commission Implementing Regulation (EU) No 650/2014 should also be amended to reflect how supervision is carried out by competent authorities in their jurisdictions. The amendments should make it possible in particular to take into account the level of consolidation applied by competent authorities for the purposes of prudential supervision in accordance with Regulation (EU) No 575/2013, to avoid unnecessary duplication in disclosing aggregate statistical data.
 - (5) The quality of the information provided and the meaningful comparison of the approaches adopted by competent authorities should be improved with detailed instructions on the formats of the disclosure that should be annexed to Commission Implementing Regulation (EU) No 650/2014.
 - (6) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority (EBA) to the Commission.
 - (7) 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 Council⁷.
 - (8) Implementing Regulation (EU) No 650/2014 should be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Article 5 of Commission Implementing Regulation (EU) No 650/2014 is replaced by the following:

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 – in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013 – by 31 July each

⁷ 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.

year based on the position as of 31 December of the preceding year in relation to the institutions subject to their prudential supervision.

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.

Competent authorities shall fill in the information in Annexes I, II, III and IV in accordance with the instructions set out in Annex V.

Article 2

1. Annexes I, II, III and IV to Commission Implementing Regulation (EU) No 650/2014 are replaced, respectively, with Annexes I, II, III and IV to this Regulation.
2. Annex V to this Regulation is added as Annex V to Commission Implementing Regulation (EU) No 650/2014.

Article 3

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 to Regulation (EU) No 650/2014]

ANNEX II

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

ANNEX III

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

ANNEX IV

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

ANNEX V

[contains new Annex V providing instructions on the templates]

4. Accompanying documents

4.1 Draft cost-benefit analysis/impact assessment

Article 15(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that when any draft ITS developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This section provides an impact analysis in relation to the format, structure, contents list and annual publication date of the information listed in Article 143(1) CRD IV.

A. Problem identification

In accordance with Article 143(1) CRD IV, ‘Competent authorities shall publish ...’. However, since the adoption of these ITS took place before the SSM entered into force, the current methodology is not aligned with the scope of CAs.

With this in mind, some sections seem to be outdated, e.g. that on the national financial sector, since a CA does not necessarily correspond to a Member State. Moreover, the lack of instructions was found to create difficulties for the reporting CAs when filling in the templates.

Similarly, during the application of these ITS, some discrepancies were found, e.g. incorrect references to COREP. Therefore, it is deemed necessary to correct them, since in accordance with Article 143(2) CRD IV ‘the information published shall be sufficient to enable a meaningful comparison’. These issues might lead to poor data quality.

B. Policy objectives

Improvements to the existing framework of the CRD/CRR on O&Ds should 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 a monitoring tool for the exercise of such O&Ds.

Furthermore, clearer guidance on how to fill in the template should streamline the data collection process and result in further harmonisation with regard 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 the 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 these ITS, the EBA has considered the following options:

- a) Status quo: do nothing.

In the event of no further action on this, the issues highlighted in the preceding points would remain. Moreover, in accordance with Article 143(2) CRD IV, 'The disclosures shall be accessible at a single electronic location'. Thus, the issues identified might lead to incorrect analyses or peer reviews if not corrected. Therefore, this option was disregarded.

- b) Alternative: propose amendments to the ITS.

The proposed amendments should clarify further where insufficient specifications have been found and require additional information from CAs.

E. Cost-benefit analysis

Benefits

It is necessary to align for fair and accurate disclosure in relation to the implementation of the EU regulations among CAs in order to achieve further harmonisation and to reflect the scope and the division of responsibilities between the ECB and NCAs within the Banking Union. Furthermore, amending the existing supervisory disclosure framework should increase the quality of the data reported, improve market transparency and provide external participants with the ability to monitor supervisory practices. Moreover, a clearer definition will potentially streamline the data collection process, reducing the data corrections required.

Costs

No additional costs for firms are envisaged in relation to the implementation of these ITS, given that the implementation of the amending ITS is limited and the ITS continue to be 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 that additional resources will be required, IT-related costs incurred, etc., by the CAs in regard to the

work resulting from the amendments. Thus, the cost of the implementation of the amending ITS is potentially negligible.



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

Comments	Summary of responses received	The EBA's analysis	Amendments to the proposal
<p>Q01: Do respondents agree to the structure and content of the proposed template in Part 1 of Annex IV? Particularly, in relation to the rows related to the total assets values that cover different perimeters for CAs within the SSM (i.e. total assets of the jurisdiction instead of total assets of the supervised institutions).</p>	<p>No responses were received.</p>		<p>No change.</p>
<p>Q02: Do respondents agree to the structure and content of the templates and instructions as proposed in Annexes I to V? If not, do respondents have substantiated reasons for amending or not including a particular data item?</p>	<p>One respondent suggested considering requiring CAs to disclose more granular information in relation to the exposure and loss amounts related to property financing, as reported by institutions.</p>	<p>The EBA is of the view of enhancing the existing disclosure of the information in relation to the property market's characteristics. However, the disclosure of that information would go beyond the mandate of these ITS, which relate to the key aspects of the prudential framework. The EBA has, however, taken note of the request and may consider this as part of the EBA's efforts, together with competent authorities, in which form such a disclosure would be possible.</p>	<p>No change.</p>