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Commission Implementing Regulation (EU) 2016/100 of 16 October 2015 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/100

of 16 October 2015

laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 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 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[(1)], and in particular Article 20(8) thereof,

Whereas:

(1) When assessing the completeness of the application for certain prudential permissions, before deciding on whether or not to grant the permissions referred to in Article 20(1)(a) of Regulation (EU) No 575/2013, the consolidating supervisor and the relevant competent authorities should ensure timely and efficient mutual cooperation and develop a shared understanding on the receipt of a complete application or on the aspects of the application which are considered to be incomplete.

(2) The consolidating supervisor should confirm to the applicant and the relevant competent authorities the date of receipt of the complete application to ensure clarity on the exact starting date of the 6-month period for reaching the joint decision and minimise the risks of possible disputes on this starting point.

(3) The assessment of completeness of the application should be performed on the basis of the matters which the competent authorities are required to assess when deciding whether to grant the permission sought. The link between the assessment to be performed by the competent authorities and the information expected to be contained in the submitted applications is essential to improve the quality of the applications and ensures consistency across supervisory colleges both of the content of applications and of the assessment of completeness.

(4) In order to ensure a consistent application of the process for reaching a joint decision, it is important that each step is well defined. A clearly outlined process facilitates timely information exchange, provides proportionate allocation and efficient management of

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supervisory resources, promotes mutual understanding, develops relationships of trust between supervisory authorities and promotes effective supervision.

(5) The assessment of completeness of the application should not extend to the assessment of the application that competent authorities perform while developing their opinion on whether to grant the permission. The time allocated to each step of the joint decision process should therefore be proportionate to the complexity and scope of that step, bearing in mind that the time period for reaching a joint decision cannot be extended or suspended.

(6) The consolidating supervisor should be in a position to assess whether and how the model for which permission is sought captures the exposures in jurisdictions outside the Union. In this context, interaction between competent authorities and third country supervisors should be promoted in order to enable competent authorities to develop a complete assessment of the performance of the model.

(7) Timely and realistic planning for the joint decision process is essential. Every competent authority involved should provide the consolidating supervisor with its contribution in the joint decision in a timely and efficient way.

(8) To ensure uniform condition of application, the steps to be followed for the performance of the assessment and the reaching of the joint decision should be established, recognising that some tasks of the process may be performed in parallel and others sequentially.

(9) To facilitate the reaching of joint decisions, it is important that the competent authorities involved in the decision-making process engage in a dialogue with each other, in particular before finalising the joint decisions.

(10) To ensure that an effective process is established, the consolidating supervisor should have ultimate responsibility for determining the steps to be followed for reaching a joint decision on approval of internal models.

(11) Establishing clear provisions for the content of the joint decisions should ensure that joint decisions are fully reasoned and contribute to efficient monitoring of any terms and conditions.

(12) In order to clarify the process to be followed once the joint decision is reached, provide transparency on the treatment of the outcome of the decision and facilitate appropriate follow-up actions where needed, standards regarding the communication of the joint decision should be established.

(13) The timeline of the process for reaching a joint decision on applications for permissions which relate to material model extensions or changes and the division of work between the consolidating supervisor and relevant competent authorities should be proportionate to the scope of those material model extensions or changes.

(14) The joint decision process under Article 20 of Regulation (EU) No 575/2013 includes the process to be followed where no joint decision is reached. To ensure uniform conditions of application of this aspect of the process and in particular to ensure the articulation of fully reasoned decisions and to clarify the treatment of any views

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and reservations expressed by relevant competent authorities, standards covering the timeline for taking decisions in the absence of a joint decision, and their communication should be established.

(15) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the European Commission.

(16) 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 Council[(2)],

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation specifies the joint decision process referred to in point (a) of Article 20(1) of Regulation (EU) No 575/2013 with regard to the applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 of that Regulation with a view to facilitating joint decisions.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'relevant competent authority' means a competent authority, other than the consolidating supervisor, which is responsible for the supervision of subsidiaries, which participate in the submission of the joint application, of an EU parent institution or an EU parent financial holding company or an EU parent mixed financial holding company in a Member State and which is required to reach a joint decision in accordance with Article 20(2) of Regulation (EU) No 575/2013 on the application referred to in point (a) of Article 20(1) of that Regulation;

(2) 'applicant' means an EU parent institution and its subsidiaries or the subsidiaries of an EU parent financial holding company or of an EU parent mixed financial holding company, which submit an application;

(3) 'assessment report' means a report containing the assessment of an application in accordance with Article 6.

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JOINT DECISION PROCESS

Article 3

Involvement of third country supervisory authorities in the assessment process

1 The consolidating supervisor may decide to involve third country supervisory authorities which participate in the supervisory college pursuant to Article 3(3) of Commission Delegated Regulation (EU) 2016/98[3] in the assessment of applications submitted pursuant to Article 20(1)(a) of Regulation (EU) No 575/2013 where the applicant operates in that third country and intends to apply the methodologies concerned to exposures in that third country. In that case, both the consolidating supervisor and those authorities shall reach an agreement on the scope of involvement of the third country supervisory authorities for the following purposes:

a providing the consolidating supervisor with their contribution to the assessment report prepared by the consolidating supervisor;

b adding as annexes the contributions referred to in point (a) to the assessment report prepared by the consolidating supervisor.

2 Where the consolidating supervisor decides to involve supervisory authorities of third countries, the consolidating supervisor shall not provide the assessment reports prepared by any relevant competent authority to the third country supervisory authorities without the express consent of that relevant competent authority.

3 The consolidating supervisor shall keep the relevant competent authorities fully informed on the scope, level and nature of involvement of the third country supervisory authorities in the assessment process and the extent to which the assessment report prepared by the consolidating supervisor has benefited from their contributions.

Article 4

Assessment of the completeness of the application

1 Upon receipt of an application for a permission referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) or Article 363 of Regulation (EU) No 575/2013 submitted by the applicant, the consolidating supervisor shall forward the application to the relevant competent authorities without undue delay, and in any case within 10 days.

2 The consolidating supervisor and the relevant competent authorities shall assess the completeness of the application within 6 weeks of receipt of the application by the consolidating supervisor.

3 An application shall be deemed complete if it contains all information needed by the competent authorities in order to assess the application in accordance with the requirements set out in Regulation (EU) No 575/2013 and in particular in Articles 143, 144, 151, 283, 312 and 363 of that Regulation.

4 The relevant competent authorities shall provide their assessment of the completeness of the application to the consolidating supervisor.

5 The assessment referred to in paragraph 4 shall indicate any elements of the application that are assessed as incomplete or missing.

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6 Where a relevant competent authority does not provide its assessment of the completeness of the application to the consolidating supervisor within the period specified in paragraph 2, the relevant competent authority shall be deemed to consider the application complete.

7 Where the consolidating supervisor or any of the relevant competent authorities consider that the information provided in the application is incomplete, the consolidating supervisor shall inform the applicant of the aspects of the application which are considered to be incomplete or missing and shall provide to the applicant the opportunity to submit the missing information.

8 Where an applicant provides the missing information referred to in paragraph 7, the consolidating supervisor shall forward that information to the relevant competent authorities without undue delay, and in any case within 10 days from the receipt of that information.

9 The consolidating supervisor and the relevant competent authorities shall assess the completeness of the application taking into account the additional information within 6 weeks of receipt by the consolidating supervisor of that information in accordance with the procedure set out in paragraphs 3 to 6.

10 Where a complete application has previously been assessed as incomplete, the 6-month period referred to in point (a) of Article 20(2) of Regulation (EU) No 575/2013 shall be deemed to start on the date of receipt by the consolidating supervisor of the information that completed the application.

11 Upon an application being assessed as complete, the consolidating supervisor shall inform the applicant and the relevant competent authorities of that fact together with the date of receipt of the complete application or the date of receipt of the information that completed the application.

12 In any case, the consolidating supervisor or any of the relevant competent authorities may require the applicant to provide additional information for the purposes of evaluating the application and reaching a joint decision on the application.

Article 5

Planning of the steps of the joint decision process

1 Prior to the start of the joint decision process, the consolidating supervisor and the relevant competent authorities shall agree on a timetable of steps to be followed in the joint decision process and on the division of work. In case of disagreement, the consolidating supervisor shall set the timetable after considering the views and reservations expressed by the relevant competent authorities. The timetable shall be set within 6 weeks of receipt of a complete application. Upon finalisation, the timetable shall be forwarded by the consolidating supervisor to the relevant competent authorities.

2 The timetable shall include the date of receipt of the complete application pursuant to Article 4(9) and at least the following steps:

a agreement on the timetable and the division of work between the consolidating supervisor and the relevant competent authorities;

b agreement on the scope of involvement of third country supervisory authorities pursuant to Article 3;