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Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to Directive 2013/36/ EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/99

of 16 October 2015

laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to 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 the European Parliament and of the Council of 26 June 2013 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/EC[(1)], and in particular Articles 51(5) and 116(5) thereof,

Whereas:

(1) The process of establishing and updating the mapping of the group entities in the Union and third countries should be led by the consolidating supervisor who should ensure that potential college members have the possibility to comment and provide their contribution to this exercise in order to ensure that all group entities are efficiently identified and the mapping reflects accurate and up-to-date information on the entities, including branches of the group. In order to facilitate the performance of the mapping exercise, to ensure that all necessary information is gathered and reflected in the mapping of the group of institutions, and to reduce compliance costs both for the consolidating supervisor or the competent authorities of the home Member State and other members of the college, the mapping should be performed by using a common template.

(2) When the consolidating supervisor intends to invite competent authorities of host Member States where non-significant branches are established, third country supervisory authorities, and other relevant authorities to participate in the college as observers, it needs to ensure that the members of the college are informed in advance of that intention and are allowed appropriate time in order to assess, agree on or object to this proposal. For ensuring that the process is managed in an appropriate manner, the consolidating supervisor should first invite the authorities eligible for becoming members of the college, and then it should proceed with invitations to potential observers of the college.

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(3) Before accepting an invitation addressed by the consolidating supervisor to potential observers of the college, those potential observers should become aware of the terms of their participation as agreed by the consolidating supervisor and the members of the college. The consolidating supervisor should be required to include the terms of the observer participation in the written coordination and cooperation arrangements of the college.

(4) The process of concluding and amending the written coordination and cooperation arrangements should be led by the consolidating supervisor who should ensure that college members have the possibility to comment and provide their input to the proposed arrangements, including the terms of observer participation. In order to ensure that the arrangements concluded by supervisory colleges are consistent, in terms of structure and provisions covered, while at the same time they allow for appropriate flexibility for including college-specific arrangements and agreements, they should be developed following a common template.

(5) While organising consultation with college members on various operational aspects of college work, the consolidating supervisor should clearly communicate an appropriate deadline by when comments and views from college members are expected.

(6) Recognising the various supervisory tasks that the consolidating supervisor and other members of the college need to perform and their complexity, the minimum expected frequency of college meetings should be set to once per year.

(7) Given that supervisory colleges may be organised in different substructures, it is essential to safeguard that all college members are timely and appropriately informed about the discussions and decisions taken under specific substructures.

(8) To safeguard the confidentiality of the information that is exchanged between the consolidating supervisor or the competent authorities of the home Member State and the members of the college, colleges of supervisors should be encouraged to use secure means of communication.

(9) The efficient and effective operation of the supervisory colleges requires that college members exchange all information necessary to enable them to assess and take measures to protect the interests of depositors and investors in their Member States and to protect the financial stability within the Union. Therefore, if the consolidating supervisor considers that a particular piece of information is not of relevance for a member of the college, the consolidating supervisor should justify its decision having previously consulted with that member and providing it with all necessary elements to assess relevance.

(10) When the ongoing review of the permission to use internal models reveals weaknesses in accordance with Article 101 of Directive 2013/36/EU, it is essential that the consolidating supervisor and the members of the college supervising group entities affected by these weaknesses work together in order to assess the materiality of these weaknesses and to decide on appropriate measures. Any decision on imposing capital add-ons or on revoking the approved model should be taken jointly by the consolidating supervisor and the relevant college members.

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(11) In order to facilitate the identification of early warning signs, potential risks and vulnerabilities for informing the group risk assessment report and liquidity risk assessment report, it is important that the consolidating supervisor and other college members agree in advance on a set of indicators to be exchanged at least on an annual basis. To ensure consistency and comparability, these indicators should be calculated on the basis of the supervisory data that competent authorities collect in accordance with Commission Implementing Regulation (EU) No 680/2014[(2)].

(12) The process of establishing and updating a college framework for emergency situations should be led by the consolidating supervisor or by the competent authorities of the home Member State who should ensure that college members have the possibility to comment and provide their input to the proposed framework.

(13) During an emergency situation it should be ensured that efficient and effective cooperation takes place between the consolidating supervisor and all college members responsible for the supervision of group entities affected or likely to be affected by the emergency situation and that the assessment of the emergency situation, the supervisory response to the emergency situation, and the monitoring and update of this supervisory response are performed in a coordinated manner with appropriate involvement of the consolidating supervisor and all college members responsible for the supervision of group entities affected or likely to be affected by that emergency situation. In addition, all college members need to be kept informed by the consolidated supervisor on the main elements of the decisions taken or information exchanged for dealing with the emergency situation.

(14) The provisions in this Regulation are closely linked to one another, since they deal with the operational functioning of the colleges of supervisors. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all the implementing technical standards required by Articles 51(5) and 116(5) of Directive 2013/36/EU in a single Regulation.

(15) As the vast majority of supervisory colleges across the EU are formed in accordance with Article 116 of Directive 2013/36/EU, it appears more appropriate to first determine the operational functioning of colleges under Article 116 of Directive 2013/36/EU before determining that of colleges under Article 51 of Directive 2013/36/EU, the former appearing more as a general case, the latter as a special case.

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

(17) 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[(3)],

HAS ADOPTED THIS REGULATION:

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CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation determines the operational functioning of the college of supervisors ('college') formed in accordance with Article 116 and Article 51(3) of Directive 2013/36/EU.

CHAPTER 2

OPERATIONAL FUNCTIONING OF COLLEGES FORMED IN ACCORDANCE WITH ARTICLE 116 OF DIRECTIVE 2013/36/EU

SECTION 1

Establishment and functioning of colleges

Article 2

Establishment and update of the mapping of a group of institutions

1 The consolidating supervisor shall submit the draft mapping, prepared in accordance with Article 2 of Commission Delegated Regulation (EU) 2016/98[(4)], to the authorities eligible for becoming members of the college pursuant to Article 3(1) of Delegated Regulation (EU) 2016/98 (hereinafter 'potential members of the college'), inviting them to provide their views and indicating the appropriate deadline for the submission of these views.

2 For the purposes of finalising the mapping and without prejudice to the application of Article 51 of Directive 2013/36/EU, the consolidating supervisor shall consider any views and reservations expressed by the potential members of the college.

3 Upon finalisation, the consolidating supervisor shall communicate the mapping of the group to all potential members of the college.

4 The consolidating supervisor shall update the mapping, applying the process defined in paragraphs 1 to 3, at least on an annual basis or more frequently in case there are significant changes in the structure of the group.

5 The consolidating supervisor shall use the template in Annex I for the establishment and update of the mapping of a group of institutions.

Article 3

Establishment of a college

1 To establish a college, the consolidating supervisor shall perform the following steps:

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a the consolidating supervisor shall send the invitations to the authorities referred to in Article 3(1) of Delegated Regulation (EU) 2016/98;

b the consolidating supervisor shall notify to the members of the college who have accepted the invitation as referred to in paragraph 3 of this Article its intention to send an invitation to the competent authorities of non-significant branch to participate as observers in the college in accordance with Article 3(2) of Delegated Regulation (EU) 2016/98;

c the consolidating supervisor shall notify to the members of the college who have accepted the invitation as referred to in paragraph 3 of this Article its intention to send an invitation to a third country supervisor authority to participate as an observer in the college in accordance with Article 3(3) of Delegated Regulation (EU) 2016/98;

d the consolidating supervisor shall notify to the members of the college who have accepted the invitation as referred to in paragraph 3 of this Article its intention to send an invitation to any authority referred to in Article 3(4) of Delegated Regulation (EU) 2016/98 to participate as an observer in the college.

For the purposes of points (b), (c) and (d) of the first subparagraph, the notification shall be accompanied by the proposal of the consolidating supervisor on the terms of the observer participation in the college to be included in the written coordination and cooperation arrangements in accordance with Article 5(c) of Delegated Regulation (EU) 2016/98.

In addition, for the purposes of point (c) of the first subparagraph, the notification shall be accompanied by the opinion of the consolidating supervisor on the assessment of the equivalence of the confidentiality and professional secrecy requirements applicable to the third country supervisory authority.

The notification referred to in the second subparagraph shall set an adequate deadline within which any disagreeing college member may express in writing its fully reasoned objection to any aspect of the proposal or opinion of the consolidating supervisor.

2 Upon agreement of all college members on the proposal, which shall be inferred by the consolidating supervisor if no objection has been expressed within the deadline, the consolidating supervisor shall send the invitation to the authority referred to in point (b), (c) or (d) of paragraph 1 to become an observer of the college. The invitation shall be accompanied by the terms of the observer participation as agreed by the members of the college and included in the written coordination and cooperation arrangements.

3 Authorities receiving an invitation to become members or observers shall acquire this status upon acceptance of the invitation. The authorities receiving an invitation to become observers shall also accept the terms of observer participation as notified to them by the consolidating supervisor.

4 Authorities referred to in points (b), (c) and (d) of paragraph 1 may request to become observers of a college. The relevant request shall be addressed to the consolidating supervisor. Where the consolidating supervisor decides to invite these authorities to participate in the college as observers, it shall apply the processes referred to in points (b), (c) and (d) of paragraph 1, as applicable.