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Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/98

of 16 October 2015

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors

(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/EC[(1)], and in particular to Article 51(4) and Article 116(4) thereof,

Whereas:

(1) The performance of the mapping of a group of institutions, which would identify the group entities in the Union or a third country and which would describe for each group entity its nature, location, the authorities involved in its supervision, the applicable prudential exemptions, its importance for the group and importance for the country in which it is authorised or established as well the criteria for determining that importance, is considered as a vital element for the identification of college members and potential observers. In this context, information on the importance of a branch for the group and importance of that branch for the Member State in which it is established is essential in order to determine the participation of the competent authorities of that Member State in college activities. Information on the nature of the group entities, whether institutions, branches or other financial sector entities, as well as on their country of authorisation or establishment, whether a Member State or a third country, is also important for identifying college members and potential observers.

(2) Information on the importance of a group entity for the group and its importance for the Member State in which it is authorised or established is essential for determining the level of engagement of the competent authority of that Member State in the activities of the college, and, in particular, for carrying out the supervisory review and evaluation process.

(3) The written coordination and cooperation arrangements referred to in Article 115 of Directive 2013/36/EU should cover all areas of college work to strengthen the efficiency of supervisory colleges. The written arrangements should also cover arrangements

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between some college members involved in specific college activities such as those performed through specific substructures of the college. The written arrangements should also include operational aspects of college work as these aspects are essential for facilitating the functioning of the college both in going concern and during emergency situations. As it is essential to ensure cooperation within the college before and for the purpose of providing input for group resolution issues, the written arrangements should provide for the processes of coordinating the relevant input as well as the responsibilities and role of the consolidating supervisor in communicating that input through the group-level resolution authority as defined in Article 2(1)(44) of Directive 2014/59/EU of the European Parliament and of the Council[(2)] to the resolution college. The written arrangements should be comprehensive, coherent and exhaustive and should provide an adequate and appropriate basis to the competent authorities in order for them to discharge their relevant duties and tasks within, rather than outside the college.

(4) Colleges are a key tool for exchanging information, anticipating and dealing with emergency situations, and enabling the consolidating supervisor to conduct effective supervision on a consolidated basis. To ensure consistency and enable the EBA to perform its tasks as provided for in Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(3)] and in Article 116 of Directive 2013/36/EU, it is appropriate for the EBA to participate in all colleges as a member.

(5) In order to perform all college activities, the consolidating supervisor and the other members of the college should have an overview of the activities carried out by all group entities, including by those carrying out financial activities without being qualified as institutions and by those operating outside the Union. Interaction between the consolidating supervisor, college members, third-country supervisory authorities, public authorities or bodies which are responsible for or involved in the supervision of a group entity, including authorities responsible for the prudential supervision of the group's financial sector entities or competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection, should be promoted by allowing these third-country supervisory authorities and public authorities or bodies to participate in college work as observers, as appropriate.

(6) College members should discuss and agree on the scope and level of involvement of observers, if any, in the college. The framework of participation of observers in the college should be clearly stated in the written coordination and cooperation arrangements and should be communicated to the observers.

(7) Members of the college of supervisors should work together, coordinating their supervisory actions to the maximum extent possible and cooperating closely in order to better perform their duties, to avoid duplication of tasks, including duplication of information requests addressed to the supervised entities of the group. In this context, agreements on entrustment of tasks and delegation of responsibilities should be considered on a regular basis by the members of the college, and at least when college members develop their college supervisory examination programme.

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(8) The consolidating supervisor should have access to all information necessary for the performance of its tasks and responsibilities and should act as the coordinator for the collection and dissemination of information received from any college member or observer or from any entity of the group, or any input received from the resolution college, in particular from the relevant group-level resolution authority. The same applies also for the members of the college. In particular, where the consolidating supervisor determines the relevance of particular information for another member of the college, including the competent authority in a host Member State where a significant branch is established, it should refrain from unjustifiably excluding members of the college from receiving information.

(9) Members of the college participating in the performance of the tasks referred to in Article 113 of Directive 2013/36/EU should be encouraged to exchange information on the assessment of the main elements of the supervisory review and evaluation process as referred to in Article 97 of that Directive, recognising at the same time that the supervisory review and evaluation process may be performed differently across Member States depending on the transposition of those Union rules into the national legislation taking also into account the guidelines issued by the EBA under Article 107(3) of Directive 2013/36/EU.

(10) To facilitate cooperation between competent authorities and to coordinate any decisions intended to address issues of compliance by an institution with the requirements regarding approaches that need permission by competent authorities before being used for the calculation of own fund requirements (use of internal models for credit risk, market risk, counterparty risk and operational risk), the conditions of cooperation between the consolidating supervisor and the relevant competent authorities for exchanging information on the performance of those internal approaches, and for discussing and reaching agreement on measures to address inefficiencies identified should be specified.

(11) To facilitate the identification of early warning signs, potential risks and vulnerabilities for the group and its entities and for the system in which they operate, college members are expected to exchange quantitative information, for the group and its entities, in a consistent and comparable way. This information should cover main areas of the information collected by the competent authorities in accordance with Commission Implementing Regulation (EU) No 680/2014[(4)] specifying the uniform formats, frequencies, dates of reporting, definitions and the IT solutions to be applied by the institutions for supervisory reporting purposes, and should be exchanged while the competent authorities are in the process of developing the group risk assessment report and reaching the joint decisions on capital and liquidity pursuant to Article 113 of Directive 2013/36/EU. Each college should decide on the exact set of information to be exchanged for these purposes.

(12) To develop the college supervisory examination programme, college members shall take into account the group risk assessment report and the outcome of the capital and liquidity joint decision so as to better identify the priorities of common work. Thus, the development of the college supervisory examination programme should start once

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the group risk assessment and joint decision process have been concluded, while for its finalisation the competent authorities should consider the tasks they have committed to perform at national level, the resources allocated to those tasks and the respective timelines for their performance.

(13) Members of the college should coordinate their activities in preparation for and during emergency situations such as adverse developments which may seriously jeopardise the orderly function and the integrity of the financial markets or the stability of the whole or part of the financial system of the Union, or other situations that affect or might explicitly affect the financial and economic situation of a banking group or any of its subsidiaries. Therefore, the planning and coordination of the competent authorities' activities in preparation for and during emergency situations should include, but not be limited to the activities referred to in the relevant provisions of Directive 2014/59/EU; in particular activities aiming at coordinating the group recovery planning and at providing coordinated input to resolution authorities, where needed, should be seen as examples of activities in preparation for and during emergency situations.

(14) When dealing with an emergency situation, college members, under the coordination of the consolidating supervisor, should aim to develop a coordinated supervisory assessment of the situation, agree on a coordinated supervisory response and monitor the implementation of their response to ensure that the emergency situation is properly assessed and addressed. They should also ensure that any external communication is done in a coordinated way and covers elements which are agreed *ex-ante* between the members of the college.

(15) The provisions in this Regulation are closely linked to one another, since they deal with the general conditions of the 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 regulatory technical standards required by Article 51(4) and 116(4) of Directive 2013/36/EU in a single Regulation.

(16) 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 specify the conditions regarding colleges under Article 116 of Directive 2013/36/EU before specifying those regarding colleges under Article 51 of Directive 2013/36/EU, the former appearing more as a general case, the latter as a special case.

(17) This Regulation is based on the draft regulatory technical standards submitted by the European supervisory authority (European Banking Authority) (EBA) to the Commission.

(18) The EBA has conducted open public consultations on the draft regulatory 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,

HAS ADOPTED THIS REGULATION:

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CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

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

CHAPTER 2

CONDITIONS REGARDING THE FUNCTIONING OF COLLEGES FORMED IN ACCORDANCE WITH ARTICLE 116 OF DIRECTIVE 2013/36/EU

SECTION 1

Establishment and functioning of colleges

Article 2

Establishment of the mapping of a group of institutions

1 For the purpose of identifying the members and potential observers of the supervisory college, the consolidating supervisor shall establish the mapping of a group of institutions in accordance with Article 2 of Commission Implementing Regulation (EU) 2016/99[(5)].

2 The mapping of a group of institutions shall result in the identification of the following group entities:

a institutions authorised and branches established in a Member State;

b financial sector entities authorised in a Member State;

c institutions authorised and branches established in a third country.

3 The following information shall be reflected in the mapping for each institution authorised and branch established in a Member State:

a the Member State where the institution is authorised or the branch established;

b the competent authority responsible for the supervision of the institution or the competent authority of the host Member State where the branch is established as well as other financial sector authorities of that Member State, such as competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection;

c for an institution, including for a subsidiary of an EU parent undertaking established in the same Member State as well as for the EU parent undertaking itself, information as to whether the institution is subject to prudential supervision on an individual basis or whether it has been granted a waiver from the application of requirements set out in