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Commission Implementing Regulation (EU) No 710/2014 of 23 June 2014 laying down implementing technical standards with regard to conditions of application of the joint decision process for institution-specific prudential requirements according to Directive 2013/36/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 710/2014

of 23 June 2014

laying down implementing technical standards with regard to conditions of application of the joint decision process for institution-specific prudential requirements 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 the third subparagraph of Article 113(5) thereof,

Whereas:

(1) Efficient exchange of appropriate information is essential for reaching a joint decision on the adequacy of own funds, the supervisory measures relating to liquidity supervision, the level of liquidity and capital requirements applied to each institution of a group and the group.

(2) In order to ensure a consistent application of the process for the reaching of a joint decision, it is important that each step is well defined. A clear process also facilitates exchange of information, promotes mutual understanding, develops relationships between supervisory authorities and promotes effective supervision.

(3) In order to perform the risk assessment and the assessment of the liquidity risk profile for a group of institutions, the consolidating supervisor should have an overview of the activities carried out by all of the institutions within the group, including institutions operating outside the Union. Interaction between the competent authorities in the Union and third-country supervisors should therefore be promoted in order to enable the former to assess the global risks faced by the group.

(4) Timely and realistic planning for the joint decision process is essential. Every competent authority involved should provide the consolidating supervisor with relevant information on a timely basis. In order for individual assessments to be presented and interpreted in a consistent and uniform manner, it is necessary to introduce a common

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template for the results of the supervisory review and evaluation processes specific to each institution.

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

(6) 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 finalizing the risk assessment reports and joint decisions.

(7) The consolidating supervisor should provide the competent authorities involved with all relevant information necessary for the preparation of their individual risk assessment and the reaching of the capital and liquidity joint decisions.

(8) The report containing the risk assessment of the group is a core document enabling competent authorities to understand and record the assessment of the overall risk profile of the banking group for the purpose of reaching a joint decision on the adequacy of own funds and level of own funds that the group is required to hold. The report containing the assessment of the liquidity risk profile of the group is an important document enabling competent authorities to understand and record the assessment of the overall liquidity profile of the group. In order to present the overall risk assessment and liquidity risk assessment of the group in a consistent manner, support meaningful discussions among competent authorities and enable a robust assessment of cross border banking group risks, common templates for these reports should be established.

(9) Whilst recognising that outcomes of the supervisory review and evaluation process specified in Article 97 of Directive 2013/36/EU may be documented differently across the Member States depending on the implementation of that Article in the national legislation while taking into account the guidelines issued by the European Supervisory Authority (European Banking Authority) (EBA) in accordance with Article 107(2) of Directive 2013/36/EU, standard templates should provide consistent formats for the communication of findings and outcomes of the supervisory review process for the purposes of reaching joint decisions.

(10) Neither the group risk assessment report nor the report containing the group liquidity risk assessment should be limited to an aggregation of individual contributions from competent authorities. Both reports should be used as a tool for performing the joint assessment of the risks of the whole group and analysing the interaction of intra-group items.

(11) Establishing clear processes for the content and articulation of the joint decision should ensure that joint decisions are fully reasoned and facilitate the monitoring of joint decisions and their enforcement.

(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 action where needed, standards regarding the communication of the fully reasoned joint decision and the monitoring of its implementation should be established.

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(13) The process to be followed for the updates of joint decisions should be established in order to ensure a consistent and transparent approach as well as appropriate involvement of competent authorities and the communication of the outcomes.

(14) The joint decision process under Article 113 of Directive 2013/36/EU includes the process to be followed where no joint decision is reached. To ensure uniform conditions of application on this aspect of the process, the articulation of fully reasoned decisions and the treatment of views and reservations expressed by host supervisors, standards covering the timeline for taking decisions in the absence of a joint decision and the communication of the details of such decisions should be established.

(15) This Regulation is based on the draft implementing technical standards submitted by EBA to the Commission;

(16) 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 following joint decision processes referred to in Article 113 of Directive 2013/36/EU:

(a) the process of reaching a joint decision on matters referred to in point (a) of Article 113(1), taking account of any waiver granted pursuant to Articles 7, 10 or 15 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)];

(b) the process of reaching a joint decision on matters referred to in point (b) of Article 113(1), taking account of any waiver granted pursuant to Articles 6, 8 or 10 of Regulation (EU) No 575/2013, and of any consolidated level of application pursuant to Article 11(3) of that Regulation.

Article 2

Definitions

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

(1) 'relevant competent authorities' means competent authorities responsible for the supervision of subsidiaries of an EU parent institution, of an EU parent financial

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holding company or of an EU parent mixed financial holding company in a Member State;

(2) 'other competent authorities' means any of the following:

(a) competent authorities which are not a relevant competent authority;

(b) public authorities or bodies officially recognized by national law, which are empowered by national law to supervise financial sector entities, as defined in point 27 of Article 4(1) of Regulation (EU) No 575/2013, which operate in the Member State concerned and which are neither a credit institution nor an investment firm;

(3) 'SREP report' means the report presenting the outcome of the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU;

(4) 'liquidity risk assessment report' means the report presenting the outcome of the part of the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU concerning liquidity risks;

(5) 'group risk assessment report' means the report containing the risk assessment of the group of institutions referred to in point (a) of Article 113(2) of Directive 2013/36/EU;

(6) 'group liquidity risk assessment report' means the report containing the assessment of the liquidity risk profile of the group of institutions referred to in point (b) of Article 113(2) of Directive 2013/36/EU;

(7) 'capital joint decision' means a joint decision on matters referred to in point (a) of Article 1;

(8) 'liquidity joint decision' means a joint decision on matters referred to in point (b) of Article 1.

CHAPTER II

JOINT DECISION PROCESS

Article 3

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 that process (hereinafter 'joint decision timetable'). In case of disagreement, the consolidating supervisor shall set the joint decision timetable after considering the views and reservations expressed by the relevant competent authorities.

2 The joint decision timetable shall be updated at least annually and shall include the following steps:

a agreement on the involvement of other competent authorities and competent authorities of third countries pursuant to Article 4;

b submission of the SREP reports and liquidity risk assessment reports from the relevant competent authorities pursuant to Article 5 and contributions from the other competent

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authorities and competent authorities of third countries involved pursuant to Article 4(2);

c submission of the draft group risk assessment report and draft group liquidity risk assessment report by the consolidating supervisor to the relevant competent authorities pursuant to Article 6(6) and to other competent authorities and competent authorities of third countries pursuant to Article 4(3), and Article 6(7);

d dialogue between the consolidating supervisor and relevant competent authorities on the draft group risk assessment report and draft group liquidity risk assessment report pursuant to Article 7;

e submission of the group risk assessment report and group liquidity risk assessment report by the consolidating supervisor to the relevant competent authorities pursuant to Article 8(2) and other competent authorities and competent authorities of third countries pursuant to Article 4(3) and Article 8(5);

f submission of contributions to the draft capital joint decision and draft liquidity joint decision by relevant competent authorities to the consolidating supervisor pursuant to Article 9(1);

g submission of the draft capital joint decision document and draft liquidity joint decision document from the consolidating supervisor to the relevant competent authorities pursuant to Article 10(6) and Article 11(5);

h consultation on the draft capital joint decision and draft liquidity joint decision documents with the EU parent institution and institutions of the group, where required by the legislation of a Member State;

i dialogue between the consolidating supervisor and relevant competent authorities on the draft capital joint decision and draft liquidity joint decision;

j reaching of the capital joint decision and liquidity joint decision pursuant to Article 12;

k communication of the capital joint decision and liquidity joint decision by the consolidating supervisor and relevant competent authorities to the EU parent institution and institutions of the group pursuant to Article 13;

l agreement on the following year's timetable for the planning of the joint decision process.

3 The joint decision timetable shall fulfil all of the following requirements:

a it shall reflect the scope and complexity of each task, taking into account the size, systemic importance, nature, scale and complexity of the activities of the group as well as its risk-profile;

b it shall take account, so far as possible, of the commitments of the consolidating supervisor and the relevant competent authorities under the supervisory examination programme referred to in point (c) of the third subparagraph of Article 116(1) of Directive 2013/36/EU.

4 Where appropriate, in particular to reflect the urgency of any extraordinary update undertaken pursuant to Articles 20 and 21, the joint decision timetable shall be reviewed.

5 The consolidating supervisor and relevant competent authorities shall communicate to the institutions of the group for which they are respectively responsible an indicative date for the consultation referred to in point (h) of paragraph 2 on the aspects of the draft joint decision documents insofar as these institutions are concerned.

The consolidating supervisor and relevant competent authorities shall communicate to the institutions of the group for which they are respectively responsible an estimated date for the communication referred to in point (k) of paragraph 2.