

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 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.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

- (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 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 ⁽¹⁾,

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.

⁽¹⁾ 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).

*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.

CHAPTER II

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 ⁽¹⁾ 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.

⁽¹⁾ 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 (see page 2 of this Official Journal).

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.
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;

- (c) dialogue between the consolidating supervisor, the relevant competent authorities and the applicant on the details of the application, where this is deemed as necessary by the consolidating supervisor and the relevant competent authorities;
- (d) submission of the assessment reports from the relevant competent authorities to the consolidating supervisor pursuant to Article 6(2);
- (e) dialogue on the assessment reports between the consolidating supervisor and the relevant competent authorities pursuant to Article 7(2);
- (f) preparation and submission of the draft joint decision from the consolidating supervisor to the relevant competent authorities pursuant paragraphs 3 and 4 of Article 7;
- (g) consultation on the draft joint decision with the applicant, where required by the legislation of a Member State;
- (h) dialogue between the consolidating supervisor and the relevant competent authorities on the draft joint decision pursuant to Article 7(4);
- (i) submission of the draft joint decision from the consolidating supervisor to the relevant competent authorities for agreement and reaching of the joint decision pursuant to Article 8;
- (j) communication of the joint decision to the applicant pursuant to Article 9.

3. The timetable shall fulfil all of the following requirements:

- (a) it shall be proportionate to the scope of the application;
- (b) it shall reflect the scope and complexity of each task performed by the relevant competent authorities and the consolidating supervisor, as well as the complexity of the institutions of the group to which the joint decision is to apply;
- (c) it shall take into account, so far as possible, the other activities being undertaken by the consolidating supervisor and the relevant competent authorities under the college supervisory examination programme referred to in Article 16 of Delegated Regulation (EU) 2016/98.

4. The division of work shall reflect the following:

- (a) the scope and complexity of the application;
- (b) the materiality of the scope of the application for each institution;
- (c) the type and location of the exposures or risks to which the application relates;
- (d) the extent to which exposures or risks assumed in a particular jurisdiction contribute to the materiality of changes or extensions of the models when assessed at the consolidated level;
- (e) the ability of the consolidating supervisor and each relevant competent authority to execute the necessary tasks to perform an assessment and give a fully reasoned opinion.

For the purposes of point (c) of the first subparagraph, where the geographical location of exposures or risks is different from the location at which the exposures or risks are managed, credited or traded, the division of work shall establish separate responsibilities for the competent authorities of the Member State in which the exposures or risks are located, and for the competent authorities of the Member State in which those exposures or risks are managed, credited or traded.

5. The consolidating supervisor shall communicate to the applicant an indicative date for the dialogue referred to in point (c) of paragraph 2 and an estimated date for the communication referred to in point (i) of paragraph 2.
6. Where it becomes necessary to update the timetable or the division of work, the consolidating supervisor shall do so in consultation with the relevant competent authorities.

Article 6

Preparation of the assessment reports

1. The relevant competent authorities and the consolidating supervisor shall assess the application based on the division of work established in accordance with Article 5(1). Those assessments shall take a form of assessment reports.
2. Each relevant competent authority shall provide its assessment report to the consolidating supervisor by the date specified in the timetable pursuant to point (d) of Article 5(2).
3. Each assessment report shall include at least all of the following:
 - (a) an opinion on whether or not the permission requested should be granted, based on the requirements set out in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), or Article 363 of Regulation (EU) No 575/2013, together with the reasoning to support the opinion;
 - (b) terms and conditions, if any, to which such permission should be subject, including corresponding reasoning and a timetable for their fulfilment;
 - (c) the assessments relating to the matters which competent authorities are required to assess in accordance with the requirements set out in Regulation (EU) No 575/2013 which relate to the permissions referred to in Articles 143, 144, 151, 283, 312 or 363 of that Regulation;
 - (d) recommendations, if any, on remedying deficiencies revealed while evaluating the application and reaching a joint decision on the application.

Article 7

Preparation of the draft joint decision

1. Any assessment report referred to in Article 6 shall be communicated by the consolidating supervisor to a relevant competent authority, where that contribution is relevant to the assessment of that relevant competent authority.
2. The consolidating supervisor shall engage in dialogue, as referred to in the timetable pursuant to point (e) of Article 5(2), with the relevant competent authorities, based on the assessment reports prepared by the consolidating supervisor and the relevant competent authorities, with a view to preparing a draft joint decision.
3. The consolidating supervisor shall prepare a fully reasoned draft joint decision. The draft joint decision shall set out each of the following items:
 - (a) the names of the consolidating supervisor and relevant competent authorities involved in the draft joint decision;
 - (b) the name of the group of institutions and a list of all institutions within the group to which the draft joint decision relates and applies, together with details of the scope of application of the draft joint decision;
 - (c) the references to the applicable Union and national law relating to the preparation, finalisation and application of the draft joint decision;
 - (d) the date of the draft joint decision and of any relevant update thereto in case of material extensions or changes as referred to in Article 13;
 - (e) an opinion on granting the permission requested based on the assessment reports referred to in Article 6;
 - (f) where the opinion referred to in point (e) is to grant the permission requested, the date from which that permission is granted;

- (g) a brief description of the results of the assessments for each institution within the group;
 - (h) any recommendations on remedying any deficiencies revealed while evaluating the application and reaching a joint decision on the application;
 - (i) any terms and conditions to be met by the applicant, including corresponding reasoning, before using the 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, where applicable;
 - (j) the reference date to which points (g), (h) and (i) relate;
 - (k) the timeline for fulfilling the terms and conditions referred to in point (i) or for addressing the recommendations referred to in point (h), where applicable;
 - (l) the timeline for implementing the draft joint decision into respective national permissions, where applicable.
4. The consolidating supervisor shall provide the draft joint decision to the relevant competent authorities for the purposes of the dialogue referred to in point h of Article 5(2), where appropriate.

Article 8

Reaching of the joint decision

1. The consolidating supervisor shall revise the draft joint decision, as necessary, to reflect the conclusions of the dialogue referred to in Article 7(4), and draw up a final draft joint decision.
2. The consolidating supervisor shall send the final draft joint decision to the relevant competent authorities without undue delay and by the deadline specified in the timetable pursuant to Article 5(2)(i), setting them a deadline within which they are to provide their written agreement which may be sent by electronic means.
3. The relevant competent authorities receiving the final draft joint decision and not disagreeing with it shall provide to the consolidating supervisor their written agreement within the set deadline.
4. A joint decision shall be deemed as reached only when all relevant competent authorities have provided their written agreement.
5. The joint decision shall consist of the joint decision and the written agreements attached thereto. The joint decision shall be provided to all relevant competent authorities by the consolidating supervisor.

Article 9

Communication of the joint decision

1. The consolidating supervisor shall communicate the joint decision referred to in Article 8(5) to the applicant in accordance with Article 20(2) of Regulation (EU) No 575/2013, along with information on the implementation of the joint decision into respective national permissions, where appropriate, by the deadline specified in the timetable pursuant to point j of Article 5(2).
2. The consolidating supervisor shall confirm to the relevant competent authorities that it has communicated the joint decision to the applicant.
3. The consolidating supervisor and the relevant competent authorities shall discuss, where appropriate, the joint decision with the institutions which are established in their jurisdiction and are subject to the joint decision to explain the details of the decision and its application.

CHAPTER III

DISAGREEMENTS AND DECISIONS TAKEN IN THE ABSENCE OF A JOINT DECISION*Article 10***Decision process in the absence of joint decision**

1. Where no agreement is reached within the time period referred in point a of Article 20(2) of Regulation (EU) No 575/2013, the consolidating supervisor shall at the request of any of the relevant competent authorities consult the European Banking Authority (EBA). The consolidating supervisor may consult the EBA on its own initiative
2. Where no joint decision is reached within the time period referred to in point a of Article 20(2) of Regulation (EU) No 575/2013, the decision of the consolidating supervisor referred to in the first subparagraph of Article 20(4) of that Regulation shall be evidenced in writing and shall be taken by the latest of the following dates:
 - (a) one month after the expiry of the time period referred to in point (a) of Article 20(2) of Regulation (EU) No 575/2013, where none of the competent authorities concerned has referred the matter to EBA in accordance with the fourth subparagraph of Article 20(4) of that Regulation;
 - (b) one month after the provision of any advice by the EBA pursuant to paragraph 1 of this Article where the consolidating supervisor has consulted the EBA within the time period referred to in point (a) of Article 20(2) of Regulation (EU) No 575/2013;
 - (c) one month after any decision taken by the EBA in accordance with the fourth subparagraph of Article 20(4) of Regulation (EU) No 575/2013.
3. Where EBA has been consulted pursuant to paragraph 1, the consolidating supervisor's decision referred to in paragraph 2 shall include an explanation of any deviations from the EBA's advice.

*Article 11***Drafting of the decisions taken in the absence of a joint decision**

The decision taken by the consolidating supervisor in the absence of a joint decision shall include all the items listed in Article 7(3), as appropriate.

*Article 12***Communication of the decisions taken in the absence of joint decision**

The consolidating supervisor shall communicate its decision to the applicant and to the relevant competent authorities without delay in accordance with the third subparagraph of Article 20(4) of Regulation (EU) No 575/2013.

CHAPTER IV

UPDATE OF DECISIONS IN CASE OF MATERIAL MODEL EXTENSIONS OR CHANGES AND ENTRY INTO FORCE*Article 13***Material model extensions or changes**

1. Where an application for permission relates to material model extensions or changes in accordance with Article 143(3), Article 151(4) or (9), Article 283, Article 312(2) or Article 363 of Regulation (EU) No 575/2013, the consolidating supervisor and the competent authorities responsible for the supervision of institutions that are affected by these material model extensions or changes shall work together, in full consultation, to decide whether or not to grant the permission sought in accordance with Article 20 of Regulation (EU) No 575/2013, following the process set out in Articles 3 to 9 of this Regulation.

2. The timetable of the joint decision process for granting permission on material extensions and changes shall fulfil all of the following requirements:

- (a) it shall be proportionate to the scope of the material model extensions or changes;
- (b) it shall be proportionate to the tasks and division of the work between the consolidating supervisor and the relevant competent authorities responsible for the supervision of institutions that are affected by these material model extensions or changes.

For the purposes of point (b) of the first subparagraph, where an application concerns a material model extension or change which affects institutions established in only one Member State, the timing allocated to the consolidating supervisor in all aspects of the process under Articles 3 to 9 shall be kept to a minimum.

Article 14

Entry into force

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, 16 October 2015.

For the Commission

The President

Jean-Claude JUNCKER
