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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2022) 3342 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 10.6.2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided by an undertaking in the application for authorisation in accordance with Article 8a of that Directive

Delegations will find attached document C(2022) 3342 final.

Encl.: C(2022) 3342 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 10.6.2022

supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided by an undertaking in the application for authorisation in accordance with Article 8a of that Directive

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 8a(6), second subparagraph, in conjunction with Article 8a(6), first subparagraph, point (a), of Directive 2013/36/EU ('the Directive') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts to specify the information to be provided for the authorisation of investment firms as credit institutions.

In accordance with Article 10(1) of Regulation (EU) No 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 8a(6), point (a), of the Directive. A consultation paper was published on the EBA internet site on 4 June 2020, and the consultation closed on 4 September 2020. Moreover, the EBA worked in consultation with the European Securities and Markets Authority (ESMA). In addition, it invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on the draft technical standards. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <https://eba.europa.eu/regulation-and-policy/investment-firms/regulatory-technical-standards-prudential-requirements-investment-firms>, pages 60-85 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft RTS specify the information to be provided to competent authorities for authorisation in accordance with the new definition of credit institutions introduced in Article 4(1), point (1)(b), of Regulation (EU) No 575/2013 (as amended by Article 62, point (3)(a), of Regulation (EU) 2019/2033).

The draft RTS consist of a subset of the information to be provided to competent authorities for authorisation of a credit institution - required in the related draft RTS submitted by the EBA (RTS/2017/08) - as they take into account the limited activities provided by the applicants. These draft RTS provide the necessary flexibility to the competent authorities in requiring such information and, in well-defined cases, allow competent authorities to waive some information considering, in particular, any prior licences the applicant might possess.

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(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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC¹, and in particular Article 8a(6), second subparagraph in conjunction with Article 8a(6), first subparagraph, point (a), thereof,

Whereas:

- (1) Under Article 8a of Directive 2013/36/EU, investment firms that meet the conditions set out in Article 4(1), point (1)(b), of Regulation (EU) No 575/2013 of the European Parliament and of the Council² should apply for an authorisation as credit institutions. Those undertakings should provide sufficient information to the competent authorities as to enable them to carry out a comprehensive assessment of the applicant credit institutions.
- (2) The list of information to be provided in an application by entities seeking to obtain the authorisation referred to in Article 8a of Directive 2013/36/EU should be specified in a regulation. Such information should include the identification details and historical information of the applicant credit institution, including its existing licensing, activities proposed, current financial situation, programme of operations, and initial capital.
- (3) To ensure consistency and harmonisation of the authorisation information required for applicant credit institutions, this Regulation should refer to the Commission Delegated Regulation (EU) .../... [PO please insert reference upon the RTS publication]³ on the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which

¹ OJ L 176, 27.6.2013, p. 338.

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

³ Commission Delegated Regulation (EU) .../... [PO please insert reference upon the RTS publication] supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities (OJ L xxx xx.xx.2022 p.x).

may prevent the effective exercise of supervisory functions and should aim to expand its scope to the investment firms that classify as credit institutions.

- (4) Article 4(1) of Regulation (EU) No 575/2013 identifies a type of credit institutions which takes deposits or other repayable funds from the public and grants credits for its own account and another which is the one covered by the scope of this Regulation. Differently, credit institutions the business of which includes taking deposits or other repayable funds from the public and granting credits for its own account should follow the requirements of Delegated Regulation (EU) .../... [PO please insert reference upon the RTS publication].
- (5) The list of information requirements provided in this Regulation for the applicant credit institutions should take into consideration the specificities of the investment firms' business model and any prior licences granted by a competent authority.
- (6) Competent authorities may need to expand the requested information in order to be in a position to assess thoroughly the applicant credit institution, taking into account the range of different business models and legal forms that applicant institutions may take. This Regulation should enable competent authorities to require additional information from an investment firm when assessing the application for a credit institution.
- (7) The competent authority may consider waiving some information requirements in light of the size, nature, scale and complexity of the activities of the applicant credit institution concerned, and taking into account the principle of proportionality and the implementation burden on the institutions. However, this should not compromise the possibility of conducting a comprehensive assessment of the application for a credit institution.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (9) 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁴,

HAS ADOPTED THIS REGULATION:

Article 1
Scope of required information

1. An application for the authorisation of a credit institution within the meaning of Article 4(1), point (1)(b), of Regulation (EU) No 575/2013 shall comply with the requirements regarding credit institutions laid down in Articles 3 to 10 of Delegated Regulation (EU) .../... [PO please insert reference upon the RTS publication].
2. Competent authorities may require additional information, provided that such information is proportionate and relevant for the purposes of the authorisation assessment.

⁴ 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).

3. Unless the competent authority requires otherwise, the applicant is not required to provide the information set out in paragraph 1 where this information is already held by the competent authority, including where it has been requested and obtained from another competent authority, provided that the applicant certifies that such information is accurate and complete on the date of the application's submission.
4. An applicant credit institution may omit from the application information that is solely relevant to activities not indicated in the information set out in the programme of operations pursuant to Article 5 of Delegated Regulation (EU) .../... [PO please insert reference upon the RTS publication], provided that the applicant identifies in the application the information omitted and cites this provision as the basis for the omission.
5. Following the assessment of the information submitted in the application, the competent authority may require the applicant to provide additional information or explanations, where the authority considers it necessary for the purposes of verifying whether all requirements for authorisation have been satisfied.
6. The applicant credit institution shall ensure that the information submitted in the application is up to date to ensure the completeness and accuracy of the information on the applicant credit institution's situation.

Article 2
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, 10.6.2022

For the Commission
The President
Ursula VON DER LEYEN