Council of the
European Union

Brussels, 29 June 2022
(OR. en)

10776/22

EF 194
ECOFIN 686
DELACT 104

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 June 2022
To:	General Secretariat of the Council
No. Cion doc.:	C(2022) 3949 final
Subject:	COMMISSION DELEGATED REGULATION (EU) …/... of 17.6.2022 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 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

Delegations will find attached document C(2022) 3949 final.

Encl.: C(2022) 3949 final

EUROPEAN
COMMISSION

Brussels, 17.6.2022
C(2022) 3949 final

COMMISSION DELEGATED REGULATION (EU) …/...

of 17.6.2022

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 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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 8(2) of Directive 2013/36/EU ('the CRD') empowers the Commission to adopt, following submission of draft technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying: (a) the information to be provided to competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10 of the CRD; (b) the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14 of the CRD; and (c) obstacles which may prevent the effective exercise of the supervisory functions of the competent authority as referred to in Article 14 of the CRD.

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 technical standards whether to endorse the drafts submitted. The Commission may also endorse the draft technical 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 8(2) of the CRD. A consultation paper was published on the EBA internet site on 8 November 2016, and the consultation closed on 8 February 2017. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1093/2010 to provide advice on them. 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 No (EU) 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 in the EBA's final report on the draft standards available from the EBA's website.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Regulation specifies: (a) the information to be provided to competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10 of the CRD; (b) the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14 of the CRD; and (c) obstacles which may prevent effective exercise of the supervisory functions of the competent authority as referred to in Article 14 of the CRD.

In particular, the Regulation is intended to promote converge of supervisory practices as regards the consideration of applications for authorisation as credit institutions by prescribing a common set of information to be submitted to competent authorities whilst securing a proportionate and workable approach taking account of the range of different applicants in terms of scale and business models, from start-ups to situations where a group may be seeking to convert a large branch to a subsidiary with a separate banking licence.

The provisions in this Regulation should be read along with the provisions in Commission Implementing Regulation (EU) XXX/2022 [*Publications Office, please insert the correct number of the delegated regulation containing the ITS on authorisation of credit institutions*] adopted pursuant to Article 8(3) of Directive 2013/36/EU.

COMMISSION DELEGATED REGULATION (EU) …/...

of 17.6.2022

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 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

(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 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/EC[1], and in particular Article 8(2), points (a) and (c) thereof,

Whereas:

(1) The information to be provided in an application for authorisation as a credit institution, as referred to in Article 8(1) of Directive 2013/36/EU, should be sufficiently detailed and comprehensive to enable the competent authority to assess whether an applicant credit institution meets the requirements laid down in Articles 10 to 14 of that Directive and in national law.

(2) The information submitted in an application for authorisation as a credit institution should be true, accurate, complete and up-to-date from the moment of submission of the application until authorisation and the commencement of activities. For that purpose, competent authorities should be informed of any changes to the information provided in the initial application, and competent authorities should be able to enquire whether any changes or updates have occurred before commencement of the activities. To ensure that competent authorities have a complete overview of the applicant credit institution, competent authorities should be permitted to request, where necessary, specific clarifications or additional information regarding an application for authorisation as a credit institution.

(3) To ensure efficiency and to avoid duplication, competent authorities should be able to waive the requirement to submit information that they already have, or to submit information that concerns activities that the applicant credit institution will not carry out in the event it is authorised.

[1] OJ L 176, 27.6.2013, p. 338.

(4) An application for authorisation as a credit institution should describe the applicant credit institution and contain information about any previous commercial activities of the applicant credit institution and its subsidiaries, and about any licences, authorisations, registrations or other permissions held, pending for approval, refused or revoked.

(5) An application for authorisation as a credit institution should contain a programme of activities, describing the activities, including those referred to in Article 1 of Directive 2013/36/EU, which will be performed in the event the authorisation is granted.

(6) To enable competent authorities to assess the overall risk profile of an applicant credit institution, to protect all stakeholders involved, including in particular depositors, and to ensure the stability of the financial markets in which the applicant credit institution will operate, an application for authorisation as a credit institution should contain information about the operational structure, business lines and target markets of the applicant credit institution, including the geographic distribution of the business. Furthermore, applicant credit institutions should provide in the application information about their membership, if any, of a deposit guarantee scheme as defined in Article 2(1), point (1), of Directive 2014/49/EU of the European Parliament and of the Council[2].

(7) To enable competent authorities to assess the financial soundness of applicant credit institutions, an application for authorisation as a credit institution should contain financial information about the applicant credit institution, including, where appropriate, at individual, consolidated and sub-consolidated levels. For the same reason, competent authorities should be able to determine the quality, origin and composition of an applicant credit institution's initial capital, as well as the ability of an applicant credit institution to comply with prudential requirements. An application for authorisation as a credit institution should therefore contain information about the amount of capital issued or to be issued and about the composition of own funds, and proof, where relevant, that the initial capital will be paid in full before the commencement of activities. To ensure that competent authorities can assess whether the activity that generated the initial capital is legitimate, an application for authorisation as a credit institution should also contain information about the origin of that initial capital.

(8) It is necessary to ensure that an applicant credit institution is under sound and prudent management and robust governance from the outset, in accordance with the requirements that a credit institution has to meet as a matter of on-going supervision. The information provided in an application for authorisation as a credit institution should therefore enable competent authorities to assess the reputation, honesty, integrity, independence of mind and time commitment of each member of the management body of an applicant credit institution, as well as the knowledge, skills and experience of the members of the management body, both individually and collectively. The information provided in an application for authorisation as a credit institution should also enable competent authorities to assess, in specified cases where not already having been assessed as members of the management body, the reputation, honesty, integrity, knowledge, skills and experience of the heads of internal control

[2] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173 of 12.6.2014, p. 149).

functions and of the chief financial officer. That information should also enable competent authorities to assess the suitability of the heads of internal control functions and the chief financial officer, where those persons are not part of the management body, of credit institutions that are significant as referred to in Article 76(3) of Directive 2013/36/EU where those credit institutions are not part of a group, are part of a group and are the consolidating credit institution, or are part a group and the consolidating credit institution is not a significant credit institution as referred to in Article 76(3) of Directive 2013/36/EU.

(9) It is necessary to ensure transparency of the shareholding structure of the applicant credit institution and to prevent criminals and their associates from holding, or being the beneficial owners of, qualifying holdings in credit institutions. Applications for authorisation as a credit institution should therefore contain information about the persons or entities that have or will have, in case of authorisation of the applicant credit institution, qualifying holdings in that credit institution. For the same reason, and where no person or other entity has or will have, in case of authorisation of the applicant credit institution, a qualifying holding in the credit institution, applications for authorisation as a credit institution should contain information about the persons who are or will be, in case of authorisation of the applicant credit institution, the twenty largest shareholders or members and about each person who has or will have, in case of authorisation, close links with the credit institution.

(10) To assess past events related to the applicant credit institution and to assess the suitability of its shareholders and members, and of the members of the management body, the applicant credit institution should provide the competent authorities with all information about past convictions and pending criminal investigations, civil and administrative cases and other adjudicative actions of the applicant credit institution, its shareholders and members, and of the members of the management body.

(11) Competent authorities should be able to assess whether there are any obstacles that could prevent the effective exercise of their supervisory functions, taking into account all relevant information, circumstances or situations and having regard to features relating to geographic presence, group structure and supervisory arrangements as set out in Directive 2013/36/EU.

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

(13) 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 Council[3].

(14) This Regulation should apply from [PO please insert date – six months after the entry into force] in order to grant the competent authorities and applicant credit institutions sufficient time to comply with the requirements laid down in this Regulation,

---

[3] 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).

HAS ADOPTED THIS REGULATION:

Article 1

Information about the identity of the applicant credit institution

An application for authorisation as a credit institution shall contain all of the following information about the applicant credit institution's identity:

(a) the name and contact details of the person to contact regarding the application;

(b) where relevant, the name and contact details of the principal professional adviser involved in the preparation of the application;

(c) the applicant credit institution's current name, trading name and logo, and, where applicable, any intended changes to those names or that logo;

(d) the applicant credit institution's legal form;

(e) the date and jurisdiction of the applicant credit institution's incorporation or formation;

(f) the address of the applicant credit institution's registered office and, where different, of its head office and of its principal place of business;

(g) where different from the contact details provided under point (a), the contact details of the applicant credit institution;

(h) where the applicant credit institution is registered in a central register, commercial register, companies register or similar public register, the name of that register and the registration number of the applicant credit institution or an equivalent means of identification in that register;

(i) where available, the applicant credit institution's Legal Entity Identifier (LEI);

(j) the date of the accounting year end for the applicant credit institution;

(k) where available, the website address of the applicant credit institution;

(l) the articles of association of the applicant credit institution or equivalent constitutional documents, and, where applicable, evidence of registration with the register designated by the law of the Member State concerned in accordance with Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council[4].

[4] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

Article 2

Information about the history of the applicant credit institution

An application for authorisation as a credit institution shall contain a summary of the history of the applicant credit institution and of its subsidiaries, including all of the following information:

(a) details about any licence, authorisation, registration or other permission of the applicant credit institution or of any of its subsidiaries to carry out activities in the financial services sector, granted by a public authority or other entity performing public functions in any Member State or third country and which falls within one or more of the following categories:

(i) the licence, authorisation, registration or permission has been granted;

(ii) the application for such licence, authorisation, registration or permission is pending or has been refused;

(iii) the licence, authorisation, registration or permission has been revoked;

(iv) after being applied for or granted, the applicant credit institution or one of its subsidiaries has decided not to proceed with such application or relinquish such licence, authorisation, registration or permission;

(b) details about any significant event relating to the applicant credit institution or to any of its subsidiaries which has taken place or is taking place and which can reasonably be considered to be relevant for the authorisation, including any of the following matters:

(i) if the applicant credit institution or any of its subsidiaries has ever been subject to a declaration of a moratorium of any indebtedness, to a restructuring or reorganisation process affecting its creditors, measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims, to a dissolution, to winding-up proceedings as defined in Article 2 of Directive 2001/24/EC of the European Parliament and of the Council[5], or to administration, insolvency or similar proceedings;

(ii) if the applicant credit institution or any of its subsidiaries has ever been the subject of any administrative penalty, civil or administrative judgment, arbitration or other adjudicative dispute resolution award or decision or any judgment on the commission of a criminal offence, resulting in a finding against the applicant credit institution or any of its subsidiaries, which was not set aside and against which no appeal is pending or can be filed, with the exception of administrative penalties imposed pursuant to Article 65, 66 or 67 of Directive 2013/36/EU and of criminal convictions, in respect of which information shall also be provided for rulings still subject to appeal, including:

(1) any unsatisfied judgments or awards outstanding;

[5] Directive 2001/24/EU of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).

(2) any settlements reached with any legal or natural person, having regard to the monetary terms of the settlements or to the circumstances in which those settlements have been reached, in a subject matter which relates to the financial services sector;

(3) any criminal conviction or civil or administrative penalty or other civil or administrative measure taken by any authority in the financial services sector or other authority because of:

– fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or a failure to put in place adequate policies and procedures to prevent such events;

– breach of legislation or regulatory requirements relating to the financial services sector or to consumer protection;

– carrying out of any unauthorised regulated activity;

(4) any other formal complaints made against the applicant credit institution or any of its subsidiaries by any of its clients or former clients which have been resolved in favour of the complainant by a non-judicial third party;

(iii) whether the applicant credit institution or any of its subsidiaries is, as of the date of the application, involved in any proceedings, criminal, civil or administrative investigations or other events referred to in any of the items listed in point (b);

(c) information on the events listed in point (b)(ii), including the name and address of the criminal or civil court or civil or administrative authority concerned, the date of the event, the amount involved, the outcome of the proceedings and an explanation of the circumstances of the event triggering the proceedings;

(d) the elements necessary to calculate the applicable fees where, pursuant to Union or national law, any application fee or supervisory fee that is to be paid by the applicant credit institution is calculated on the basis of the activities or the characteristics of the applicant credit institution;

(e) evidence of payment of any of the fees referred to in point (d).

Article 3

Programme of activities of the applicant credit institution

An application for authorisation as a credit institution shall contain a programme of the activities of the applicant credit institution, including:

(a) a list of the activities that the applicant credit institution intends to carry out, including the activities listed in Annex I to Directive 2013/36/EU;

(b) a description of how the programme of operations (the business plan) aligns with the proposed activities.

An applicant credit institution may omit from the application information that is solely relevant to activities not listed in the programme of activities, provided that it identifies in the application which information has been omitted and cites this provision as the basis for that omission.

Article 4

Financial information about the applicant credit institution

An application for authorisation as a credit institution shall contain all of the following financial information:

(a) forecast information on the applicant credit institution at an individual level and, where applicable, at consolidated level and sub-consolidated level, indicating the share represented by the credit institution, with a base case and stress scenario basis, including:

(i) forecast accounting plans for the three years following authorisation as a credit institution or, depending on national law, the commencement of activities, detailing the business lines for each of the different activities carried out, where relevant for each country or relevant geographic area, including:

(1) forecast balance sheets;

(2) forecast profit and loss accounts or income statements, detailing fixed and variable costs and providing an indication of the sensitivity of the business to major indicators, including volume, price, geography and exposure, and an explanation of the measures aimed at reducing the exposure to those risks;

(3) forecast cash flow statements, where applicable;

(ii) planning assumptions for the forecasts referred to in point (i), as well as explanations of the figures in the plans, and in particular the assumptions underlying the stress scenario basis;

(iii) forecast calculations of the applicant credit institution's own funds requirements and capital buffers, as referred to in Directive 2013/36/EU and in Part Three of Regulation (EU) No 575/2013 of the European Parliament and of the Council[6], of its liquidity requirements as referred to in Part Six of that Regulation, and of the leverage ratio requirements as referred to in Part Seven of that Regulation, for the three years following authorisation as a credit institution;

(iv) the funding profile, including any source of financing, the level of diversification, and its terms and conditions of the funding;

(v) a summary of the internal liquidity adequacy assessment, at individual level and, where applicable, at consolidated, sub-consolidated and individual levels,

[6] 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 (OJ L 176, 27.6.2013, p. 1).

as applicable, demonstrating that the applicant credit institution's liquidity resources will be adequate to meet its individual liquidity requirements;

(b) statutory financial statements of the applicant credit institution, at individual level and, where applicable, at consolidated and sub-consolidated level, approved by the statutory auditor or audit firm, covering at least the last three financial years preceding the application, or, where the applicant credit institution has less than three years of activity, covering the period since the beginning of that activity, including:

(i) the balance sheet;

(ii) the profit and loss accounts or income statements;

(iii) cash flow statements;

(iv) the annual reports and financial annexes and any other documents filed with the competent registry or authority and, where applicable, a report by the applicant credit institution's auditor covering the three financial years preceding the application or, where the applicant credit institution has less than three years of activity, covering the period since the beginning of that activity;

(v) in the case of statements prepared on a consolidated or sub-consolidated basis, the share of the applicant credit institution;

(c) an outline of any indebtedness incurred or expected to be incurred by the applicant credit institution prior to the commencement of its activities as a credit institution, including, where applicable, the name of the lenders, the maturities and terms of such indebtedness, the use of proceeds and, where the lender is not a supervised financial institution, information on the origin of the borrowed funds or on the funds expected to be borrowed;

(d) an outline of any security interests, guarantees or indemnities granted or expected to be granted by the applicant credit institution prior to the commencement of its activities as a credit institution;

(e) where available, information about the credit rating of the applicant credit institution and the overall rating of its group;

(f) where, pursuant to Article 11(1), (2) and (3), and Article 14(1) of Regulation (EU) No 575/2013, the applicant credit institution or its parent undertaking is to comply with Parts Two to Six or with Part Eight of that Regulation, an analysis of the scope of consolidated supervision, including information on which group entities will be included in the scope of consolidated supervision, and an analysis of the effect of any potential waiver, derogation, exclusion or specific method or treatment referred to in Part One, Title II of that Regulation;

(g) an outline of the following frameworks and policies of the applicant credit institution:

(i) the risk management framework, explaining the applicant credit institution's high-level strategy for identifying and managing risks to its business, including money laundering and terrorist financing risks, outlining the strategy for

managing those risks and including a risk tolerance and appetite statement and measures to align the assessed risk with the risk appetite;

(ii) the liquidity risk management policy;

(iii) the funding concentration and diversification policy;

(iv) the collateral management policy;

(v) the deposit policy;

(vi) the credit and lending policy;

(vii) the concentration risk policy;

(viii) the provisioning policy;

(ix) the dividend distribution policy;

(x) the trading book policy;

(h) a description of the applicant credit institution's process for developing a recovery plan, as defined in Article 2(1), point (32), of Directive 2014/59/EU of the European Parliament and of the Council[7], and, where applicable, a group recovery plan, as defined in Article 2(1), point (33), of that Directive.

(i) a statement or confirmation that, before or at the latest on the date of authorisation, the applicant credit institution shall become a member of a deposit guarantee scheme officially recognised in the Member State where the application is submitted, in accordance with Article 4(3) of Directive 2014/49/EU, and shall identify the deposit guarantee scheme.

(j) any institutional protection scheme, as referred to in Article 113(7) of Regulation (EU) No 575/2013, that the applicant credit institution has entered into or proposes to enter into.

Article 5

Information about the programme of operations, the structural organisation, internal control systems and the auditors of the applicant credit institution

1. An application for authorisation as a credit institution shall contain the following information about the programme of operations (the business plan), the structural organisation, the internal control systems, and the auditors of the applicant credit institution:

[7] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(a) the programme of operations for at least the first three years following authorisation as a credit institution or, depending on national law, the commencement of activities which shall contain, on a base case and stress scenario basis, information on planned business and on the structure and organisation of the applicant credit institution, including the following items:

(i) an overview of the geographical distribution of the activities intended to be carried out by the applicant credit institution in the home Member State and in any other Member State or third country, including through branches or subsidiaries or by direct provision of services, and future expansion plans;

(ii) an explanation of the initial and on-going viability of the business model;

(iii) an overview of target markets, customer segmentation, products and services and delivery channels such as branches, internet, post, agencies and subsidiaries;

(iv) an overview of the organisation and structure of the group of which the applicant credit institution is part, describing the activities of the entities in the group and indicating the parent undertakings, financial holding companies and mixed financial holding companies within the group;

(v) an overview of all the likely business and regulatory risk factors, including money laundering and terrorist financing risks, and an explanation of how these will be monitored and controlled;

(vi) an indication of whether an implementation plan covering the period until the applicant credit institution is fully operational is needed and, where available, the overview of any such plan;

(vii) an overview of the applicant credit institution's overall strategy, including strategic goals and any identified competitive advantages, and of the reasons for its establishment and why it has decided to carry on the business for which it seeks authorisation;

(b) information on the organisation, structure and governance arrangements of the applicant credit institution, including the organisational chart and each of the following items:

(i) a description of the applicant credit institution's arrangements, processes and mechanisms referred to in Article 74(1) of Directive 2013/36/EU;

(ii) the terms of reference of the management body;

(iii) a description of the human, technical and legal resources allocated to the various planned activities, including IT, commercial, legal, internal control and compliance functions;

(iii) a description of the interactions between the applicant credit institution's various functions;

(iv) the name of each payment, clearing or settlement system of which the applicant credit institution intends to be, directly or indirectly, a member during the first year of operation;

(c) the following information on the internal control framework:

(i) an overview of the internal organisation, including devoted budgetary and human resources, of the compliance function, risk management function, internal audit function, including an explanation of how the applicant credit institution will satisfy its legal and prudential requirements, including anti-money laundering and counter-terrorist financing requirements, the identity of the persons responsible for the internal control functions and a description of the institution's compliance, internal control and risk management systems and procedures and of the reporting lines to the management body;

(ii) an outline of the following policies and procedures dealing with matters relevant to activities identified pursuant to Article 3:

(1) whistleblowing policy;

(2) conflicts of interest policy;

(3) complaints handling policy;

(4) market abuse policy;

(5) policy promoting diversity of the management body;

(6) remuneration policy for staff members whose professional activities have a material impact on the applicant credit institution's risk profile;

(iii) an outline of the systems and policies for assessing and managing the risks of money laundering and terrorist financing as identified in the high-level strategy referred to in Article 4, point (g)(i), including an overview of the key procedures that have been put in place to counter the risk that the applicant credit institution might be used to further financial crime;

(d) a description of the internal audit resources and an outline of the methodology and internal audit plan for the three years following authorisation as a credit institution;

(e) an outline of the following policies and plans of the applicant credit institution:

(i) the internal audit policy;

(ii) the product governance policy;

(iii) the consumer protection policy;

(iv) the business continuity plan and policy, including an overview of available back-up and recovery systems and of plans ensuring the availability of key staff in business continuity situations;

(f) the following information on the organisation of operations and activities of the applicant credit institution:

(i) an outline of external and intra-group outsourcing to support the applicant credit institution's operations or internal control activities, including information about all of the following:

(1) the outsource supplier;

(2) any link of the outsource supplier with the applicant credit institution;

(3) the location of the outsource supplier;

(4) the rationale for outsourcing;

(5) the human resources of the outsource supplier;

(6) the applicant credit institution's internal control system for managing the outsourcing;

(7) any contingency plans in the event that the outsource supplier cannot provide continuity of service;

(8) any retained functions regarding outsourced activities;

(ii) an outline of oversight responsibilities and arrangements, systems and controls for each outsourced function that is critical or important to the applicant credit institution's management and operations;

(iii) an outline of the service level agreements and arrangements for each outsourcing function that is critical or important to the applicant credit institution's management and operations;

(iv) a description of the applicant credit institution's IT infrastructure, including the systems in use or to be used, its hosting arrangements, the organisation of its IT function, IT structure, IT strategy and IT governance, IT security policies and procedures, and any systems and controls in place or to be put in place for the provision of online banking facilities.

2. An application for registration as a credit institution shall set out the name, address, and contact details of the applicant credit institution's statutory auditors or audit firm.

Article 6

Information about the capital at authorisation of the applicant credit institution

1. An application for authorisation as a credit institution shall contain evidence of the applicant credit institution's issued capital, paid-up capital and capital which is not yet paid up, and shall specify the types and amounts of own funds that correspond to the initial capital.

2. Where the initial capital has not been paid-up in full at the time of submitting the application for authorisation as a credit institution, the application for authorisation as a credit institution shall set out the plan and implementation deadline for ensuring that the initial capital is paid up in full before the authorisation to commence the activity as a credit institution is effective.

3. An application for authorisation as a credit institution shall provide an explanation of the available funding sources for own funds and, where available, evidence of the availability of those funding sources, including:

   (a) a summary of the use of private financial resources, including their availability and source;

   (b) a summary of access to financial markets, including details of financial instruments issued or to be issued;

   (c) a summary of any agreements or contracts entered into in respect of own funds, including, in relation to borrowed funds or to funds expected to be borrowed, the name of the lenders and the details of the facilities granted, the use of proceeds and, where the lender is not a supervised financial institution, information on the origin of the borrowed funds or on the funds expected to be borrowed;

   (d) the identity of the payment service provider used to transfer financial resources to the applicant credit institution.

4. An application for authorisation as a credit institution shall contain an assessment of the amounts, types and distribution of internal capital that the applicant credit institution considers to be adequate to cover the nature and level of the risks to which the applicant credit institution will be or might be exposed, and an analysis, including projections, showing that the capital resources will be sufficient to meet the own funds requirements once the credit institution has been authorised, and thereafter for a period of at least three years following authorisation as a credit institution of severe but plausible stress.

   The stress scenario and methodology referred to in the first subparagraph shall take into account the scenario and methodology used in the most recent annual supervisory stress test carried out by the competent authority pursuant to Article 100(1) of Directive 2013/36/EU, if any such supervisory stress test was carried out, and the information shall be provided both for the applicant credit institution on an individual basis as well as for the consolidated situation, where applicable.

Article 7

Information about the effective direction of the applicant credit institution

1. An application for authorisation as a credit institution shall contain the information referred to in Annex I in relation to each of the proposed or appointed members of the applicant credit institution's management body.

2. Where the competent authority considers that the applicant credit institution is a significant institution in terms of its size, internal organisation and the nature, scope and complexity of its activities, as referred to in Article 76(3) of Directive 2013/36/EU, the application for authorisation as a credit institution shall, for the heads of the internal control functions and the chief financial officer where they are not part of the management body, contain the information listed in Annex I, except for the information referred to in point 1, points (f) and (g), and points 2, 4 and 5 of that Annex.

3. An application for authorisation as a credit institution shall contain a description of the powers, individual tasks, duties and proxies of the proposed or appointed members of the applicant credit institution's management body, and, in the case of applicant credit institutions as referred to in paragraph 2, of the heads of internal control functions and the chief financial officer who are not part of the management body.

4. For the purposes of this Article, the following definitions shall apply:

   (a) 'chief financial officer' means the person that is overall responsible for managing the financial resources, financial planning and financial reporting;

   (b) 'control function' means a function that is independent from the business unit it controls and that is responsible for providing an objective assessment of the credit institution's risks, review or report on those, including the risk management function, the compliance function and the internal audit function;

   (c) 'heads of internal control functions' means the persons at the highest hierarchical level in charge of effectively managing the day-to-day operation of the independent risk management, compliance and audit functions;

Article 8

Information about shareholders or members with qualifying holdings in the applicant credit institution

1. An application for authorisation as a credit institution shall contain the information referred to in point 1 of Annex II about all natural and legal persons and other entities that have or, if the authorisation is obtained, will have a qualifying holding in the credit institution, and information about their holdings.

2. Where the person referred to in paragraph 1 is a natural person, the application for authorisation as a credit institution shall contain the information referred to in point 2 of Annex II, in addition to the information referred to in paragraph 1.

3. Where the person referred to in paragraph 1 is a legal person, or is an entity which is not a legal person that holds or will hold the qualifying holding in its own name, the application for authorisation as a credit institution shall contain the information referred to in point 3 of Annex II, in addition to the information referred to in paragraph 1.

4. Where a trust already exists or is created following the subscription of a person to the share capital of the applicant credit institution, the application for authorisation as a credit institution shall include the information referred to in point 4 of Annex II, in addition to the information referred to in paragraph 1.

5. Where a person has or, if the authorisation is obtained, will have a qualifying holding in that credit institution and is a member of an entity that is not a legal person, whereby the qualifying holding in the credit institution will be treated as an asset of that entity, the application for authorisation as a credit institution shall contain the following information:

   (a) the identity of all members of that entity, together with the information referred to in point 2 of Annex II where those members are natural persons, or the information referred to in point 3 of that Annex where those members are legal persons;

   (b) a summary of the terms of the agreement or agreements governing the entity.

Article 9

Information about the 20 largest shareholders in, or members of, the applicant credit institution, other than shareholders or members with qualifying holdings

Where no person or other entity has or, if the authorisation is obtained, will have a qualifying holding in the credit institution, the application for the authorisation as a credit institution shall contain:

(a) the chart referred to in point 1(a) of Annex II;

(b) the information referred to in the list in point 1(b) of Annex II;

(c) a list of the 20 largest shareholders in, or members of, the applicant credit institution, as the case may be;

(d) where the credit institution has fewer than 20 shareholders or members, a list of all its shareholders or members;

(e) information on whether any of the shareholders or members referred to in point (c) or (d) are subject to supervision by a competent authority.

Article 10
Additional information

1. Competent authorities may require that an application for authorisation as a credit institution contains additional information to the information referred to in Articles 1 to 8 provided that that information meets both of the following conditions:

   (a) that additional information is necessary to verify whether all requirements for authorisation laid down by the Member State pursuant to Article 8(1) of Directive 2013/36/EU have been satisfied;

   (b) the amount of information required is proportionate to the purpose of the verification referred to in point (a) and the information is relevant for that verification.

2. In duly justified cases, following the assessment of the information submitted in the application for authorisation as a credit institution, competent authorities may require applicant credit institution to provide supplementary information, or additional explanations, where those authorities consider it necessary to verify whether all requirements for authorisation have been satisfied.

3. The information in an application for authorisation as a credit institution shall be true, accurate and complete up to the point of authorisation. The applicant shall inform the competent authority of any changes to the information provided in the initial application. Competent authorities may require information about whether any changes have occurred after the submission of the application and before commencement of the activities.

Article 11
Waiver

Competent authorities may waive the requirement to provide any or all of the information referred to in Articles 1 to 9 where either of the following conditions is met:

(a) the competent authority already has the information and the information is still true, accurate, complete and up to date on the day on which the authorisation is granted and is certified as being so by the applicant credit institution;

(b) the requirement to provide information is subject to a waiver as set out in Article 21 of Directive 2013/36/EU.

Article 12
Potential obstacles to effective supervision

When assessing whether there are potential obstacles to effective supervision as referred to in Article 14(3) of Directive 2013/36/EU, competent authorities shall consider all relevant information, and shall take into account:

(a) the interactions of the laws, regulations or administrative provisions of a third country governing the natural or legal persons to which the credit institution has or, if

the authorisation is obtained, will have close links, any difficulties involved in the enforcement of those laws, regulations or administrative provisions and any difficulties in obtaining information from the authorities in such third countries or from such persons;

(b) the possibility of exchanging information with the authority, if any, supervising the persons having close links with the credit institution;

(c) the complexity and transparency of the structure of the group of the credit institution or of the person or persons having close links;

(d) the location of the members of the group of the credit institution or of the person or persons having close links;

(e) the activities performed or to be performed by the members of the group of the credit institution or of the person or persons having close links.

Article 13

Entry into force and date of application

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 apply from [PO please insert date – six months after the entry into force]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17.6.2022

For the Commission
The President
Ursula VON DER LEYEN