

EBA/Op/2024/07

14 November 2024

Opinion of the European Banking Authority

on the European Commission's proposed amendments relating to the draft Implementing Technical Standards on supervisory reporting in accordance with Article 430 (7) of Regulation (EU) No 575/2013 and to

the draft implementing technical standards on public disclosures by institutions of the information referred to in Part Eight, Titles II and III of Regulation (EU) No 575/2013

Introduction and legal basis

The EBA competence to deliver an opinion is based on Article 15(1), fourth subparagraph, of Regulation (EU) No 1093/2010¹ (EBA Regulation), as supervisory reporting and disclosures by institutions relates to areas of competence of the EBA, which has been mandated under Articles 430(7) and 434a of Regulation (EU) No 575/2013² (CRR) to develop draft implementing technical standards on these topics.

In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors³, the Board of Supervisors has adopted this opinion which is addressed to the European Commission.

General comments

1. On 20 June 2024, the EBA submitted to the European Commission, for adoption, the draft implementing technical standards (ITS) for the application of Regulation (EU) No 575/2013 with regard to public disclosures by institutions of the information referred to in Part Eight, Titles II and III, of that Regulation, and repealing Commission Implementing Regulation (EU) 2021/637. On 5 July 2024, the EBA submitted to the European Commission, for adoption, the draft implementing technical standard (ITS) for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Commission Implementing Regulation (EU) 2021/451, in accordance with Article 430 (7) of the CRR.
2. The draft ITS aim at updating the current reporting and disclosure framework covering mainly the changes deriving from the full implementation of Basel III standards which directly impact the reporting/ disclosure requirements. Specifically, these changes concern the output floor, credit risk, market risk, operational risk, crypto assets and leverage ratio.
3. With its letters of 7 and 28 October 2024, the European Commission informed the EBA of its intention to endorse the draft ITS with amendments. A modified version of the draft ITS was submitted to the EBA on the same date.
4. The letter received from the European Commission details amendments of a substantive nature and changes of a non-substantive nature. Regarding the substantive changes, while in the original legal texts submitted by the EBA to the European Commission, the reporting/disclosure templates would not be part of the ITS and would not be published in the Official Journal (OJ) but on the EBA website as part of the IT solutions, as mandated under Articles 430(7) and 434a of the CRR, the texts as amended by the European Commission

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).

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 2021/451 (OJ L 176, 27.06.2013, p. 1–337).

³ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

foresee that the templates would be part of the ITS in an Annex and published in the OJ. The non-substantive changes include legal drafting amendments of the legal texts, editorial changes and some additional clarifications on the recitals and the legal text.

5. With regard to the amendments envisaged by the European Commission, which are of a substantive nature, the EBA considers that they change the draft ITS in a significant manner from a policy perspective and therefore warrant a formal opinion as referred to in Article 15, fourth subparagraph, of the EBA Regulation. Under Articles 430(7) and 434a of the CRR, as amended by the CRR3, EBA is also mandated to 'develop IT solutions, including reporting templates and instructions for the reporting/disclosures'. The EBA is of the view that the original texts proposed by the EBA and submitted to the European Commission would better specify and reflect the terms of the adoption process laid down in those Articles and would provide more clarity for the institutions since the reporting/disclosure templates would be published only on the EBA website, while also not affecting the commitment on the part of the EBA to public consultations and cost-benefit analysis. However, in EBA's opinion, the texts as amended by the European Commission, despite the substantive nature of the changes, still allow for a better operationalisation of the reporting and disclosure requirements compared to the current framework. Consequently, the EBA would like to provide some clarifications that are outlined in the section 'Specific comments' below.

Specific comments / proposals

6. Article 430(7) of the CRR was amended by the CRR3 to specify that the EBA is not only tasked with developing ITS "to specify the uniform reporting formats, the frequency and dates of reporting, as well as the definitions", but also to "develop IT solutions, including reporting templates and instructions". In the same way, Article 434a(1) of the CRR was amended by the CRR3 to specify that the EBA is not only tasked with developing ITS "to specify uniform disclosure formats, and information on the resubmission policy", but also to "develop IT solutions, including instructions, for disclosures".
7. The newly introduced requirements for the EBA to develop reporting and disclosure templates in an IT format (Excel, XBRL, or any other format or software solution) aims at enabling the EBA to develop IT solutions to promote automation and efficiency in the domain of reporting and disclosure requirements. The draft ITS submitted by the EBA on 20 June and on 5 July 2024 were, in accordance with the solution agreed with the European Commission at that time, to have only the main body of the ITS published in the OJ, while templates and instructions would be directly embedded in the "IT solutions" to be made available to credit institutions on the EBA's website.
8. The EBA is of the view that the draft ITS initially submitted to the European Commission put forward a clearer articulation of the reporting and disclosure requirements while at the same time providing legal certainty. In these draft ITS, no discretionary powers were allowed to the EBA. Under the proposed text, the EBA could not depart from the data points/information required under the ITS and the EBA would need to ask for a new endorsement from the

European Commission each time a data point would be added or removed. The EBA understands that with re-including the templates (named “uniform disclosure formats”) in the normative package to be adopted by the Commission and then published in the OJ, the Commission seeks to further reassure market participants about legal certainty of the stability of the requirements.

9. The EBA acknowledges that the solution provided by the Commission maintains some of the flexibility envisaged in the CRR3 mandates for the ITS, as the EBA is empowered to design IT solutions that do not necessarily follow the exact same structure of the ITS annex, as long as the EBA does not add or remove the data points listed in the ITS’ annex. In addition, the relevant instructions will be made available in the IT solutions published on the EBA website, as laid down in the CRR3, allowing the EBA to address directly certain technical questions in the instructions and simplify exchanges with institutions on those matters.
10. Nevertheless, the EBA would still prefer the solution included in the draft ITS initially submitted to the Commission and is of the view that the solution provided by the Commission does not reflect fully the objectives of the CRR3 mandates on which the draft ITS are based, which supported more flexibility as regards the development of IT solutions to be made available on the EBA website. The solution now presented by the European Commission via the proposed changes is accepted by the EBA but is understood as an intermediate step based on which the European Commission will continue to work, together with the EBA, on further operationalising the amended ITS mandate under CRR3.

This opinion will be published on the EBA’s website.

Done at Paris, DD Month YYYY

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors