

Delegated and Implementing Measures in the Banking Field Forthcoming Level 2 Acts under CRD IV and CRR (update 2018)

Committee on Economic and Monetary Affairs
Scrutiny Session of 26 March 2018

This briefing has been prepared to support **ECON's work on scrutiny** of delegated acts, in particular the discussion of **26 March 2018** on various forthcoming draft measures (Delegated Acts (**DAs**)), and in particular Regulatory Technical Standards (**RTS**) under the *Capital Requirements Directive* [2013/36/EU](#) (**CRD IV**) and the *Capital Requirements Regulation* (EU) No [575/2013](#) (**CRR**).

In brief

The **CRD IV and CRR** constitute the core of European banking legislation. They contain many empowerments for the Commission to adopt 'Level 2' measures, i.e. Delegated Acts (**DAs**) and Implementing Acts (**IAs**)¹ including specific types thereof, namely Regulatory Technical Standards (**RTS**) and Implementing Technical Standards (**ITS**), which are both based on drafts by the European Banking Authority (**EBA**). To date, some of these measures are still outstanding² - and the situation has not much improved since 2017. To be noted that in the past, the EBA has requested the Commission to extend the deadlines for certain RTS, and the EBA has also published documents explaining why certain RTS are not delivered. In view of the prerogative of the European Parliament to object to DAs/RTS, this briefing will focus on one pending 'correction' to a DA as well as the seven draft EBA RTS where the Commission's adoption is pending, in particular those three which appear to be **more politically relevant** because they detail methods how banks' capital (requirements) are measured. Thus they are crucial for the application of the CRR/CRD IV and for the industry in view of their substantive impact on capital needed.

CURRENT STATE OF PLAY

- The Commission has already adopted and published **11 DAs and eight IAs under the CRD**, as well as **29 DAs and 38 IAs under the CRR**; these figures (based on EUR-lex data) include RTS, ITS and amending acts, but often combine multiple mandates (around 76 RTS- and 50 ITS-mandates).
- **Still pending under CRD are two ITS and one RTS**; under **CRR three ITS, one IA and one (correcting) DA plus 16 RTS** still have to be finalised according to DG FISMA information.³
- For 11 of these RTS under CRR and CRD, no final EBA draft is available (but the EBA consulted on seven); for seven RTS adoption may happen in the (near) future as EBA has already delivered final draft RTS texts for them (the Commission should react within three months, Art. 10 [EBA Regulation](#)). Of these

¹ Under Articles 290 and 291 of the Treaty on the Functioning of the EU (TFEU), respectively.

² See the overviews on EUR-lex: [CRD IV ITS](#) and [CRD IV RTS](#), as well as [CRR ITS](#) and [CRR RTS](#) listing all measures already adopted and published.

³ The Commission's DG FISMA website provides regularly updated **overview lists** on [RTS](#) and on [ITS](#) supplementing CRR/CRD (latest update 9 January 2018), **listing the adopted and outstanding measures**.

seven available draft RTS, two have been adopted recently by the Commission and are currently under scrutiny of the European Parliament and the Council. RTS identified as being **more politically relevant** in view of their crucial impact on the capital a bank has to provide are displayed in bold. Two of them are discussed in more detail in this briefing which is an update of the [briefing](#) provided for the CRD/CRR scrutiny session of [28 February 2017](#).

Table 1: Updated overview on pending RTS (without reviews, prolongation of waivers, etc.)

RTS subject and legal basis (bold: files of specific interest for ECON)	Submission deadline in CRR/CRD IV	EBA draft RTS delivered on	COM planning/OJ publication
Criteria for intragroup inflows & outflows, Art 422(10), 425(6)CRR	1.1.2015	26.7.2016	was 26.6.2016 OJ 8.7.2017
Default definition, thresholds for past due items, Art 178(6) and (7) CRR	31.12.2014	28.9.2016	28.9.2016 OJ 6.2.2018
Disclosures of unencumbered assets*, Art 443 CRR	1.1.2016	24.2.2017	was 31.12.2016 OJ 13.12.2017
Assessment methodologies for Advanced Measurement Approaches (AMA) for operational risk, Art 312(4)(a) CRR; adopted by COM, under scrutiny until 16.4./14.6.2018	31.12.2014	3.6.2015	was 2015, now 3/2018
CVA risk Own Funds Requirements*, Art 382(5) CRR adopted by COM, under scrutiny (until 24.4.2018)	30.6.2015	9.2.2017	was 30.6.2016; now 1/2018
Risk weights for specialised lending exposures, Art 153(9) CRR	31.12.2014	13.6.2016	was 13.6.2016, now 5/2018
Probability of Default (PD) estimation (Internal Ratings Based (IRB) assessment methodology), Art 144(2), 173(3), 180(3)(b) CRR	31.12.2014	21.7.2016	was 20.6.2016, now 5/2018
Market risk assessment methodology (internal models and significant share), Art 363(4)(b) and (c) CRR	31.12.2014	22.11.2016	was 2016, now 5/2018
Proxy spread and smaller portfolios for CVA Risk, Art 383(7) CRR – <i>draft EBA RTS (21.6.2017) is an update to existing RTS</i>	-	21.6.2017	3/2018
Authorisation of credit institutions*, Art 8(2) CRD	31.12.2015	14.7.2017	was 31.12.2016, now 5/2018
Roll out, Art 148 CRR – see EBA letter 2015	31.12.2014	[On hold]	
Permanent partial use of Standardised Approach, Art 150(3), 152(5) CRR – see EBA letter 2015	31.12.2014	[On hold]	
Economic downturn loss given default (LGD) and conversion factors, Art 181(3), 182(4)(a) CRR	31.12.2014	Exp. Q3/18; see EBA opinion (4.2.2016)	
Mortgage Lending Value, Art 124(4) CRR (EBA OP/2015-17)	31.12.2014	[On hold] see EBA opinion (5.10.2015)	
Eligible collateral within CRM framework*, Art 194(10) CRR	30.6.2014	EBA prop. deletion **	
Conditions for conditional guarantees*, Art 183(6) CRR	31.12.2014	EBA monitoring **	
Immaterial portfolios*, Art 221(9) CRR	31.12.2015	EBA monitoring **	
Risk weights for mortgage lending, Art 164(6), 124(4)(b) CRR	31.12.2014	See EBA letter (5.9.2016)	was 30.6.2016, now none
Combined use of different approaches*, Art 314(5) CRR – see EBA letter 2016	31.12.2016		was 31.12.2016, now none
Methods of prudential consolidation, Art 18(7) CRR, EBA consultation paper of 6.11.2017	31.12.2016		
Relevant indicator under accounting standards*, Art 316(3) CRR – see EBA letter 2016	31.12.2017		now 12/2018
Amending DA for LCR, Art. 460 CRR - under consultation (ended 21.2.2018)	-		4/2018

* = extension requested; grey = adopted; italics = new change to table of [2/2017](#); **/On the first two RTS, the EBA will be **continuously monitoring the need to deliver on these mandates** also in light of international developments in this regulatory area; on the third RTS mandate, the **EBA recommends this be deleted** from the CRR, see [EBA Report on Credit Risk Mitigation \(CRM\) framework](#) of 19 March 2018

SOME GENERAL ITEMS FOR DISCUSSION

Background: The EBA publishes all final draft RTS and ITS on its website as soon as they are submitted to the Commission. Article 10(1) of Regulation (EU) No 1093/2010 ([EBA Regulation](#)) prescribes that the Commission has **three months** to decide on whether to endorse a draft RTS as proposed or in part only, or with amendments, where the Union's interests so require, observing the specific procedure laid down in this Article. As part of the informal cooperation established between ECON and the Commission on draft level 2 measures, ECON Members may submit comments and questions on the drafts of EBA to the Commission services.

- **Transparency & legal issues:** Delivery dates are decided by the co-legislators. The EBA wrote letters to the Commission in [2015](#) and in [2016](#) to request **revised deadlines** for delivery of certain draft RTS under the CRR and the CRD IV (no letter in 2017). The requests may be seen as related to Article 10(2) [EBA Regulation](#) ('Where the Authority has not submitted a draft RTS within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.')
- The **EBA's prolongation request** letters are available on the EBA website, but the **Commission's decision** on the prolongation of deadlines is not made public or notified to the Parliament.
- Certain RTS are **put 'on hold'** by the EBA; e.g. the one on **Mortgage Lending Value**, Art. 124(4) CRR (initial deadline 31.12.2014); for others, the EBA will **monitor** (RTS under Art. 183(6) and Art. 221(9) CRR) or **proposes deletion** (RTS under Art. 194(10) CRR), see [EBA Report on Credit Risk Mitigation \(CRM\) framework](#) of 19 March 2018.
- While the EBA explains in various reports and opinions the reasons for such non-delivery of draft RTS, an overview in a single document is not available but would be useful (Commission to extend its [overview](#)/EBA to supplement its interactive single rulebook on [CRD/CRR](#) or its [Work Programme](#)?)
- In view of the amending **DA on the Liquidity Coverage Ratio (LCR)** described below:- What were the **reasons for the delay; which feedback resulted from the consultation?**
- Regarding a) the **RTS listed** below that are of more political relevance, b) the already available draft RTS of the EBA (listed at end of this briefing, p. 6), and c) the remaining mandates for RTS:- **What is the current status of adoption by the Commission? What are the reasons for the delays? What is the EBA's planning for providing the outstanding draft RTS?**
- **Forwarding draft RTS and ITS to EP:** The Commission has the obligation to forward the draft RTS/ITS received from the EBA **immediately** to the Parliament; Article 10(1) fourth subparagraph [EBA Regulation \(EU\) No 1093/2010](#). In some cases, there have been delays in the submission.- It might be more efficient if the EBA forwards its drafts simultaneously to the Commission, the European Parliament and the Council. This could be addressed in an amendment to the EBA Regulation.

1. Amendment to the Delegated Act on the Liquidity Coverage Ratio (LCR) 2015/61 of 10.10.2014

The existing [DA on the Liquidity Coverage Ratio](#)⁴ (Art. 460 CRR) sets out rules governing which assets can be considered as high quality liquid assets and how the expected cash outflows and inflows are to be calculated under stressed conditions. In mid-2015, the Commission started to prepare a '**correction**' to the **DA** in order to make limited amendments to the LCR. The Commission planned to adopt the 'correcting' DA after the adoption of the *simple, transparent and standardised (STS) securitisation proposal* (COM(2015)472 of 30.9.2015). In the meantime, the STS Regulation was adopted and published end 2017.⁵ On 24.1.2018, the Commission has put forward an **amending DA for consultation** that ended on

⁴ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions, OJ L 11, 17.1.2015, p. 1.

⁵ [Regulation \(EU\) 2017/2402](#) of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35.

21 February 2018. The proposal is intended to make limited amendments to the LCR Delegated Regulation under Art. 460 CRR to improve its practical application.

The proposed amendments relate to

- the calculation of expected liquidity outflows and inflows on repos, reverse repos and collateral swaps transactions, in order to fully align them with international liquidity standards development by the Basel Committee on Banking Supervision (BCBS);
- the treatment of certain reserves with central banks and non-EU public sector entities that are not rated at least 'External credit assessment institution (ECAI) 1' grade;
- the waiver of the minimum issue size for certain non-EU liquid assets by waiving for consolidated purposes any applicable minimum issue size requirements for third country liquid assets held by a non-EU subsidiary;
- the application of the unwind mechanism for the calculation of the liquidity buffer, among other things, to align it more closely with the Basel standard by removing collateral received through derivatives transactions from the mechanism; and
- the integration of simple, transparent and standardised (STS) criteria for securitisation into the LCR DA.

State of play: The Commission is currently reviewing the replies to the consultation.

2. COM adopted RTS on assessment methodology for the advanced measurement approaches (AMA) for operational risk, Art. 312(4) CRR, EBA/RTS/2015/02⁶ of 3 June 2015

The [draft EBA RTS on AMA Assessment](#) of 3 June 2015 set out the criteria to be taken into account by competent authorities (CA) when considering whether to grant institutions permission to use the AMA. Banks may only be granted permission if they prove that all relevant qualitative and quantitative requirements of the RTS have been met; CAs will then be expected to assess institutions on an ongoing basis. If adopted, the RTS will replace the [CEBS Guidelines on the implementation, validation and AMA and IRB Approaches](#) (GL-10 CEBS, 2006) issued by the EBA's predecessor - the Committee of European Banking Supervisors (CEBS) - and addressed to AMA institutions (listed in the final draft RTS). The draft RTS establish the standards intended to promote convergence between assessment methodologies setting out:

- the key methodological components of the operational risk measurement system, in particular the classification, identification, collection and treatment of operational risk events; and
- the qualitative elements of an AMA framework with respect to the role and responsibilities of the operational risk management function and reporting system.

State of play: While the Commission indicated at the 2017 scrutiny slot that the RTS would be adopted in April/May 2017, it has in fact **adopted the RTS on 14 March 2018**⁷ and indicated a scrutiny period of one month (16 April 2018); however, a comparison of the EBA draft RTS and the adopted COM text shows many changes to the text that go beyond the correction of typos and wrong references. In this case, the RTS cannot be considered being 'the same' as the EBA draft and consequently, the scrutiny period is three months (14 June 2018); Article 13(1) of the [EBA Regulation \(EU\) No 1093/2010](#).

→ In the explanatory Memorandum to the Commission's adopted RTS, no information is provided as to the *length of the adoption period* (almost three years instead of three months) or the *reasons for the text changes*. In addition, the *title does not indicate that the DA contains RTS* (as usually done for previous acts).

⁶ Final Draft Regulatory Technical Standards on the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches (AMA) for operational risk in accordance with Article 312 of Regulation (EU) No 575/2013.

⁷ [Commission Delegated Regulation \(EU\) No .../... of 14.3.2018 supplementing Regulation \(EU\) No 575/2013 of the European Parliament and of the Council with regard to the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk](#) under Article 312(4) CRR. The content of the RTS relates to Article 312(4) **letter (a)** CRR.

3. Draft EBA RTS on Probability of Default (PD) estimation (Internal Ratings-Based (IRB) assessment methodology), Art. 144(2), 173(3), 180(3)(b) CRR, EBA/RTS/2016/03⁸ of 21 July 2016

In the [draft RTS on the assessment methodology for the IRB approach](#) the EBA specifies the assessment methodology competent authorities should follow when assessing the compliance of an institution with the requirements for using the IRB approach. The IRB approach allows for the estimation of own credit risk parameters for the purpose of calculating regulatory capital. The purpose of the RTS is to harmonise the supervisory assessment methodology with respect to the IRB approach across all EU Member States. As with the previous draft RTS, these draft RTS will also replace the above mentioned [CEBS Guidelines \(GL-10 CEBS, 2006\)](#), but the change is limited to Section 2.2.2, Section 3 and Annex III in the context of the assessment methodology used by competent authorities in assessing the compliance of an institution with the requirements for using the IRB Approach. To facilitate the implementation of changes stemming from the regulatory products specified in the EBA's plan for the [review of the IRB Approach](#) for competent authorities as well as for institutions, the EBA has issued an [opinion](#) specifying the expected general principles and timelines for the implementation process.

State of play: The Commission indicated at the 2017 Scrutiny Slot that the RTS would be adopted in June 2017; however, the RTS are still outstanding - even though the draft EBA RTS has been submitted.

4. Draft EBA RTS on Internal model approach assessment methodology and significant share, Art. 363 (4) CRR; EBA/RTS/2016/07⁹ of 22 November 2016

The EBA specified in the [final draft RTS on the assessment methodology for the Internal Model Approach \(IMA\) for market risk](#) the criteria applied to assess what is a 'significant share' of the positions to be included in an internal model, computed for each one of the market risk categories referred to in Article 363(1) CRR¹⁰. Under the IMA, institutions determine their own funds requirements for market risk based on internally developed models. Competent Authorities may, according to Article 363 CRR, permit institutions to use the IMA for one or several of the risk categories listed in paragraph 1 of that Article, provided that the conditions set out in Part Three, Title IV, Chapter 5 of the CRR are met. The draft RTS set out the criteria to be applied by competent authorities when assessing the significance of positions included in the scope of market risk internal models and the two different methodologies for general and specific risk categories, both based on the standardised rules for market risk. The standards shall be used by competent authorities in their assessment of institutions' compliance with IMA requirements when the institutions apply the IMA to determine market risk capital requirements or introduce any material changes or extensions to the IMA approach. The draft RTS aim to assist in the assessment of whether institutions meet minimum IMA requirements on an ongoing basis following the regular review of the internal model.

The EBA has taken into account the developments at international level in market risk capital standards, in particular the Fundamental Review of the Trading Book (FRTB) that the Basel Committee on Banking Supervision (BCBS) published in January 2016. These RTS introduce some elements that go in the direction of the Basel review but, at the same time, can be implemented within the CRR. The EBA has dropped some elements included in the consultation paper that will no longer be relevant once the new market risk framework has been implemented in the EU.

State of play: The Commission is currently working on the act to be adopted (planned in May 2018).

⁸ Final Draft Regulatory Technical Standards on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use the IRB Approach in accordance with Arts. 144(2), 173(3) and 180(3)(b) of Reg. (EU) No 575/20.

⁹ EBA Final Draft Regulatory Technical Standards on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use internal models for market risk and assessment of significant share under points (b) and (c) of Article 363(4) of Regulation (EU) No 575/2013, EBA/RTS/2016/07 of 22 November 2016.

¹⁰ The EBA already completed the mandate to draft RTS specifying the conditions for assessing the materiality of extensions and changes to use market internal models, included in letter (a) of Article 363(4) CRR; [Commission Delegated Regulation \(EU\) 2015/942 of 4 March 2015 amending Delegated Regulation \(EU\) No 529/2014 supplementing Regulation \(EU\) No 575/2013 of the European Parliament and of the Council as regards regulatory technical standards for assessing the materiality of extensions and changes of internal approaches when calculating own funds requirements for market risk](#); OJ L 154, 19.6.2015, p. 1.

Other pending draft EBA RTS

The following five draft RTS have been **finalised by the EBA** and were submitted to the Commission, but have not yet been adopted by the latter. **N.B.:** Under Article 10 (1) [EBA Regulation](#), the Commission has **three months** to react to the draft RTS as proposed by the EBA.

- Final [draft RTS on Assigning Risk Weights to Specialised Lending Exposures](#) under Article 153(9) of Regulation (EU) No 575/2013 CRR, EBA/RTS/2016/02 **of 13 June 2016**;
- Final [draft RTS on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use the IRB Approach in accordance with Articles 144\(2\), 173\(3\) and 180\(3\)\(b\) of Regulation \(EU\) No 575/2013](#); EBA/RTS/2016/03 of **21 July 2016**;
- Final [draft RTS on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use internal models for market risk and assessment of significant share](#) under points (b) and (c) of Article 363(4) of Regulation (EU) No 575/2013, EBA/RTS/2016/07 **of 22 November 2016**;
- Final [draft Regulatory Technical Standards \(RTS\) for determining proxy spread and limited smaller portfolios for credit valuation adjustment under Article 383\(7\) of Regulation \(EU\) No 575/2013 \(the Capital Requirements Regulation – CRR\)](#), EBA/RTS/2017/07 **of 21 June 2017**. **N.B.** The draft RTS propose limited amendments to [Commission Delegated Regulation \(EU\) 526/2014](#) for determining proxy spread and limited smaller portfolios for CVA risk; they specify cases where alternative approaches can be used for identifying an proxy spread and market loss-given-default (LGD_{MKT});
- Final [draft regulatory technical standards/RTS \(Draft Regulatory Technical Standards under Article 8\(2\) of Directive 2013/36/EU 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 may prevent the effective exercise of supervisory powers](#), EBA/RTS/2017/08 **of 14 July 2017**.

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