



EBA/CP/2014/30

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03 October 2014

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## Consultation Paper

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Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU and Draft Implementing Technical Standards on the form and content of disclosure of financial support agreements under Article 26 of Directive 2014/59/EU

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# 1. Responding to this Consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 7.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 04/01/2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive summary

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Article 23(2) and (3) of Directive 2014/59/EU mandate the EBA to develop draft RTS and to issue guidelines on the various conditions for the provision of financial support, which must be satisfied to permit one group entity to provide financial support to another group entity that meets the conditions for early intervention based on a support agreement in accordance with Article 19.

Chapter III of the Directive aims at enabling groups to strengthen their group wide integrated risk management and allocate liquidity optimally when the group is in financial distress. The purpose is to set a clear harmonised framework and facilitate group support and enhance legal certainty despite existing legal obstacles, in particular in cross border groups, while maintaining adequate safeguards for financial stability. It should be noted, however, that a support agreement falling under Chapter III is not a condition for providing liquidity within the group, in particular with regard to the regular liquidity management. The provisions do not affect contractual or statutory liability arrangements between institutions which protect the participating institutions through cross-guarantees and equivalent arrangements either.

The conditions relate to the expected success of the support, the terms of the support taking into account that interest of the group as a whole, various prudential requirements applying to the providing entity and to the impact on financial stability. All the conditions should be assessed by the receiving entity and the competent authority responsible for the providing entity, taking into consideration also the information provided by the competent authority of the receiving entity.

When specifying the conditions, the draft RTS and the guidelines require institutions to take into account possible reasons for the financial distress of the institution concerned, including its business model, the current market situation and potential further adverse developments. Whether the conditions are fulfilled must be assessed based on a description and a projection of the capital and liquidity situation and needs of the receiving entity.

The assessment of the interest of the group has to consider the default risk of the receiving entity and the loss given default (LGD), including a comparison of the LGDs for both cases if, respectively, support were or were not provided. It takes into account direct and indirect benefits for the entity providing the support, including those resulting from a recovery, or the risks caused by a destabilisation, of the group as a whole.

In addition, the risks for financial stability and the impact on the resolvability of the providing entity are to be analysed based on, among other factors, the significance of the providing entity for the financial system or one or more Member States and an analysis whether the provision of the support does not make the implementation of the resolution strategy substantively less feasible or less credible.

Article 23 makes clear that prudential requirements for the providing entity relating to capital, liquidity and large exposures have to be respected, however it empowers competent authorities to authorise the provision despite non-compliance where necessary. The guidelines set out principles for the assessment whether such authorisation should be granted.

In addition, Directive 2014/59/EU provides for disclosure of the general terms of a support agreement. The disclosure should be made on the institution's website and contain all relevant information while respecting the need or confidentiality of more specific information.

### 3. Background and rationale

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Article 23(2) of Directive 2014/59/EU mandates the EBA to develop draft RTS on the conditions for providing group financial support set out under points (a), (c), (e) and (i) of Article 23(1). Under Article 23(3) there is an additional mandate to issue guidelines on the conditions under points (b), (d), (f), (g) and (h) relating to prudential requirements applying to the providing entity among other things. Chapter III of Directive 2014/59/EU sets out harmonised rules for group financial support. The rationale for the harmonisation of these rules was to overcome obstacles to an optimal allocation of liquidity and available collateral in groups in distress, especially cross border groups, resulting from Member States' national laws, which did not take into account the specific needs of banking groups, and diverging national regulatory requirements concerning intra-group agreements. For the broader interest of financial stability, which is enhanced by strengthening recovery options for groups in distress, the Directive recognises the objective of restoring the financial stability of the group as a whole, while maintaining adequate safeguards. As pursuant to Article 19(4), Member States shall remove any legal impediment in national law to group financial support transactions, after the transposition the requirements and conditions under Chapter III will replace most requirements under national laws, provided that nothing shall prevent Member States from imposing limitations on intra-group transactions in accordance with the options provided for in Regulation (EU) No 575/2013, transposing Directive 2013/36/EU or requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability. It should be noted, however, that a support agreement falling under Chapter III is not a condition for providing liquidity within the group.

In addition, Article 23 empowers competent authorities to authorise non-compliance with prudential requirements for capital, liquidity and large exposures. The guidance how to use this power should leave appropriate flexibility for competent authorities to analyse the situation of the group on a case-by-case basis, while providing for sufficient clarity to firms and investors.

Article 23 stipulates a number of conditions, which must be satisfied to permit one group entity (parent, subsidiary or sister company) to provide financial support to another group entity that meets the conditions for early intervention. Competent authorities have to assess these conditions when deciding on authorising the provision of support (Article 25), and the decision of the institution's management on the provision is required to indicate that the provision complies with them (Article 24). The conditions contain safeguards relevant for the protection of the entity providing the support and its creditors, as well as for the financial stability of the entities and the financial system as a whole, including public interests such as the resolvability of the entity providing the support.

The following overview groups the conditions into those for which the EBA is mandated to develop the draft RTS and to draft guidelines, respectively:

Conditions in Article 23(1)	EBA deliverable	Summary of content
(a) Reasonable prospect that the support redresses the financial difficulties of the receiving entity	RTS	Capital and liquidity needs of the receiving entity covered for a sufficient period of time.
(b) Objective of preserving or restoring the financial stability of the group as a whole and is in the interest of the providing entity	GL	Analysis of the benefits for the group as a whole resulting from a preservation or restoration of the financial soundness of the receiving entity compared to the risks for the financial position of the group to be expected if the support is not provided.
(c) Terms of the support in accordance with Art. 19(7)	RTS	Terms reflect the default risk of the receiving entity, the loss given default and the relation of benefits and costs taken into account when determining the best interest under Art. 19(7).
(d) Reasonable prospect that the consideration will be paid and, in case of a loan, the loan will be reimbursed	GL	Analysis of risk factors which may influence the ability of the receiving entity to meet its obligations, evaluation of collateral.
(e) The support would not jeopardise liquidity or solvency of the providing entity	RTS	The assets of the providing entity can be reasonably expected to be at all times higher than its liabilities and it can be reasonably expected to be able to pay all of its liabilities as they fall due,

Conditions in Article 23(1)	EBA deliverable	Summary of content
(f) The support would not create a threat to financial stability	GL	taking into account potential adverse developments and the default risk of the receiving entity and the loss given default.
(g) The support shall not cause the providing entity to breach CRD IV/CRR capital and liquidity requirements	GL	Analysis of various factors such as significance of the providing entity for the financial stability of one or more Member States and the financial condition of the providing entity.
(h) The support shall not cause the providing entity to breach CRD IV/CRR large exposure requirements	GL	Combined buffer requirement and liquidity requirements have to be complied with, unless authorised by competent authorities. Principle based approach to non-compliance with combined buffer requirement and liquidity requirements, based on restoration plans.
(i) The support would not undermine the resolvability of the providing entity	RTS	Large exposure requirements have to be complied with, unless authorised by competent authorities. Principle based approach.
		The provision of the support does not make the implementation of the resolution strategies substantively less feasible or less credible.



To ensure accessibility of the information on support agreements, the ITS on the form and content of the disclosure of support agreements establish that the disclosure should be made on the institution's website and should include the form the support may take, the maximum amount, the principles for calculation of the consideration for the provision of the support, a general description of the maturity profile and the maximum term of loans provided as support, of the termination and prepayment rights, and of collateral and margin requirements.

# 4. Draft regulatory TS specifying the conditions for group financial support

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COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

[...]

**supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of conditions for group financial support**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 23(2) thereof,

Whereas:

- (1) Article 23(1) of Directive 2014/59/EU sets out various conditions which must be fulfilled to permit a parent institution, a Union parent institution and certain other entities in a group and their subsidiaries that are institutions or financial institutions to provide financial support in the form of a loan, the provision of guarantees and the provision of assets for use as collateral to another group entity based on a group financial support agreement falling under Chapter III of that Directive, if this group entity meets the conditions for early intervention. Pursuant to Article 25(2) of Directive 2014/59/EU, the competent authority of the group entity providing the support may prohibit or restrict the provision of the financial support.
- (2) Having regard to the financial difficulties of the receiving entity and the condition that there must be a reasonable prospect that the financial support redresses these financial difficulties, a thorough analysis of capital and liquidity needs of the receiving entity and an analysis of the internal and external causes for the financial difficulties and of past, present and expected market conditions should be undertaken. This analysis

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<sup>1</sup> OJ L 173, 12.6.2014, p.190.

should include measures planned for addressing the causes of the distress of the receiving entity which can efficiently support the restoration of its financial situation.

- (3) The assessment of the various conditions falls in the responsibility of the institution and the competent authority. It should take into account the risk of potential adverse developments. For a comprehensive assessment of the conditions that relate to the providing entity, competent authorities should also take into account information and assessments provided by the competent authority responsible for the receiving entity.
- (4) The condition that the terms of the provision are in accordance with Article 19(7) of Directive 2014/59/EU should take into account the default risk of the receiving entity and the loss for the providing entity given a default of the receiving entity, based on a comparison of the situations following the support or, respectively, without granting it, and on full disclosure of the relevant information. They should reflect the best interest of the providing entity within the meaning of Article 19(7), which provides for a thorough analysis of costs and benefits for the providing entity and the group as a whole in these two scenarios.
- (5) Financial support agreements and the provision of support may improve the resolvability of a group, for example if they are in line with the loss absorption mechanism provided by the resolution strategy. However, they may also impair the feasibility of the implementation of the chosen strategy, for example if the strategy envisages a separation of different parts of the group. Therefore the assessment of the impact on resolvability should be based on the resolvability assessment and on the group and individual resolution plan, where applicable the group resolution plan as determined by the joint decision of resolution colleges.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.
- (7) The European Supervisory Authority (European Banking Authority) 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 opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### *Subject matter and scope*

This Regulation specifies the conditions set out in Article 23(1) points (a), (c), (e) and (i) of Directive 2014/59/EU with regard to financial support by a group entity in accordance with Article 19 of Directive 2014/59/EU.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation the following definitions will apply:

- (1) ‘Providing entity’ means the group entity providing the financial support.
- (2) ‘Receiving entity’ means the group entity receiving the financial support.

### Article 3

#### *Prospect to redress financial difficulties*

The condition of a reasonable prospect that the support provided significantly redresses the financial difficulties of the receiving entity is met, if such prospect of redress is supported by the following elements:

- (a) Capital and liquidity needs of the receiving entity identified by a description of the capital and liquidity situation of the receiving entity and a projection of its capital and liquidity needs are covered for a sufficient period of time, taking into account all relevant sources from which these needs could be met, the timescale required to redress the financial difficulties and the term of the support.
- (b) The analysis of the financial situation and of the internal and external causes for the financial difficulties, in particular of the business model and the risk management of the receiving entity, and of past, present and expected market conditions does not contradict the prospect of redress.
- (c) An action plan describing measures for the redress of the financial situation of the receiving entity, including where necessary a revision of its business model and risk management.
- (d) The underlying assumptions in the descriptions and projections mentioned in points (a) to (c) are coherent and plausible and take into account the stressed condition of the receiving entity, the current market conditions and potential adverse developments.

When assessing this condition, the competent authority shall take into account information and assessments provided by the competent authority responsible for the receiving entity.

#### **Question 1:**

**Are there further elements of a credit assessment which would be useful in this context when assessing whether the financial support is expected to redress the financial difficulties of the receiving entity and the further conditions (e.g. the terms of the provision of the support and the prospect of the payment of consideration and repayment)? Please specify.**

### Article 4

#### *Terms of the support*

1. The terms, including consideration, for providing the financial support are deemed in accordance with Article 19(7) of Directive 2014/59/EU, if the following conditions are met:
  - (a) The terms, in particular the consideration, adequately reflect the default risk of the receiving entity, the seniority of the claim, the expected loss for the providing entity given a default of the receiving entity, and, in case of a loan or committed facility, the maturity profile, based on a full disclosure of all relevant and up-to-date information by the receiving entity and further information available to the providing entity. An anticipated temporary impact on market prices arising from events external to the group does not need to be taken into account, if a plausible projection

of the market situation supports the assumption that the extent of this impact and its duration do not jeopardise the ability of the receiving entity to meet all of its liabilities as they fall due.

- (b) The terms reflect the best interest of the providing entity in accordance with Article 19(7) and the relation of benefits and costs taken into account when determining the best interest, including direct or indirect benefits that may accrue to the party as a result of the provision of financial support and of the benefits for the group from this provision.
2. The assessment of points (a) and (b) should be based on a comparative analysis of the default risk of the receiving entity if the support is or is not provided. The analysis should include potential damage to franchise, refinancing and reputation and benefits from an efficient use and fungibility of the group's capital resources and its refinancing conditions. To the extent possible, the benefits and costs taken into account in determining the best interest should be quantified in monetary terms.
  3. When assessing the best interest, any covenants in the support agreement supporting the assumptions on the future business model and risk management of the receiving entity shall be taken into account. In this context, the competent authority shall take into account information and assessments provided by the competent authority responsible for the receiving entity. In addition, a quantification of the discount granted to the receiving entity compared to market terms should be provided, including in relation to haircuts on collateral or interest rates.

**Question 2:**

**How could the interest of the providing entity and the group as a whole be measured and reflected in the terms of the provision of the support? What information could be used to inform the assessment of the terms, also with respect of non-quantifiable costs and benefits?**

*Article 5*

*Liquidity and solvency of the providing entity*

Without prejudice to the condition specified in point (g) of Article 23(1) of Directive 2014/59/EU, the provision of the financial support does not jeopardise the liquidity or solvency of the providing entity, if, following the provision of the financial support, and taking into account the default risk of the receiving entity and the loss for the providing entity given default of the receiving entity also with a view to a potential adverse development in accordance with the requirements of proper risk management for the providing entity, the assets of the providing entity can be reasonably expected to be at all times higher than its liabilities and it can be reasonably expected to be able to pay all of its liabilities as they fall due.

*Article 6*

*Resolvability of the providing entity*

1. The provision of the financial support does not undermine the resolvability of the providing entity, if the provision of the financial support does not make the implementation of the resolution strategy as set out in the resolution plan substantively less feasible or less credible, in accordance with the assessment under Articles 15 and 16 of Directive 2014/59/EU, taking into account in particular the potential absorption of



losses within the group, the increased interconnectedness of the providing entity with the receiving entity, the increasing risk of contagion within the group, its higher complexity and the capital and liquidity situation of the providing entity.

2. If providing entities are not fully informed about a preferred resolution strategy, they shall perform this assessment on basis of the information available to them about the resolution plan.

*Article 7*

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,

*For the Commission*  
*The President*

*[For the Commission*  
*On behalf of the President*

*[Position]*

## 5. Draft EBA guidelines specifying the conditions for group financial support

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### Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of 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 (*the EBA Regulation*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

### Reporting Requirements

According to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by dd.mm.yyyy. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

## Title I - Subject matter, scope and definitions

### 1. Subject matter

These guidelines specify the conditions set out in points (b), (d), (f), (g) and (h) of Article 23(1) of Directive 2014/59/EU.

### 2. Definitions

(a) 'Providing entity' means the group entity providing the financial support.

(b) 'Receiving entity' means the group entity receiving the financial support.

(c) 'Combined buffer requirement' has the meaning defined in point (6) of Article 128 of Directive 2013/36/EU.

(d) 'Subsidiary' has the meaning defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013.

(c) 'Principal' means (i) in case financial support is provided in the form of a loan, the principal of the loan; (ii) in case the financial support is provided in the form of a guarantee or security, the liability arising for the receiving entity if the guarantee or the security is enforced.

(d) 'Best interest' has the meaning given to it by the description in Article 19(7) of Directive 2014/59/EU.

## Title II- Specification of conditions for group financial support

3. In determining whether the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole, the competent authority and institutions should analyse and compare

(a) the direct and indirect overall benefits for the group as a whole (i.e. the sum of the benefits for any group entity) resulting from a restoration of the financial soundness of the receiving entity and the overall risks for the financial position of the group to be expected should the support not be provided and the risk of a default of the receiving entity in this case, compared to

(b) the risks for the group resulting from the provision, including the default risk of the receiving entity and the loss of the group given default after receiving the support.

4. In assessing whether the provision of financial support is in the interest of the providing entity, the competent authority and institutions should analyse and compare



- (a) the direct and indirect overall benefits for the providing entity resulting from a restoration of the financial soundness of the receiving entity and the overall risks for the financial position of the providing entity to be expected should the support not be provided and the risk of a default of the receiving entity in this case, compared to
  - (b) the risks for the providing entity resulting from the provision, including the default risk of the receiving entity and the loss of the providing entity given the default of the receiving entity after receiving the support.
5. The analysis under paragraphs 3 and 4 should take into account the requirements of a sound capital and liquidity management and any existing internal policies and procedures to manage and restrict intra-group transactions. The analysis should include potential damage to franchise, refinancing and reputation and benefits from an efficient use and fungibility of the group's capital resources and its refinancing conditions. Where possible, institutions should estimate the monetary value of the costs and benefits that are not quantified.

**Please see in this context Question 2 above.**

6. When assessing whether there is a reasonable prospect that consideration for financial support will be paid and that the principal will be reimbursed on their respective due dates, the providing entity and the competent authority should conduct an adequate analysis of all the risk factors which may influence the ability of the receiving entity to meet these obligations or potential obligations on their due dates and its default risk, in particular the following:
- (a) Whether the receiving entity's capital and liquidity needs, identified by a description of its capital and liquidity situation and by a projection of its capital and liquidity needs, are covered for a sufficient period of time, taking into account all relevant sources from which these needs could be met.
  - (b) Whether measures planned for a restructuring of the receiving entity and a revision of its business model and risk management can efficiently support the restoration of the financial situation of the receiving entity in accordance with the planned schedule and permit a full repayment of the principal and consideration on their due dates.
  - (c) The analysis of the financial situation and of the internal and external causes for the financial difficulties, in particular of the business model and of the risk management of the receiving entity, and of past, present and expected market conditions support the conclusions under (a) and (b).

The underlying assumptions in the descriptions and projections mentioned in points (a) to (c) should be coherent and plausible and take into account the stressed condition of the receiving entity, current market conditions and potential adverse developments. The competent

authority should take into account information and assessments provided by the competent authority responsible for the receiving entity.

**Please see in this context Question 1 above.**

7. When assessing whether the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support, the providing entity and the competent authority should analyse at least the following factors:
  - (a) Significance of the providing entity for the financial stability of the Member State where it is established, other Member States and the Union, including taking into account interdependencies between the providing entity and other entities which are significant for the financial stability, in particular through membership in an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 2013/575;
  - (b) financial condition of the providing entity and of the group members which are significant for its stability;
  - (c) probability of future developments with negative impact on the providing entity or on group members which are significant for its stability, or on the financial stability of the Member State where it is established, other Member States and the Union; and
  - (d) risk that the provision of the support will divest the providing entity of the liquidity or assets which will be necessary to accommodate to future negative developments, including the capacity of the providing entity to support other group members which are important for the stability of the group and financial stability.
8. When analysing the impacts on the financial stability in the Member State where the receiving entity is authorised, the competent authority should take into account information and assessments provided by the competent authority responsible for the receiving entity.
9. With respect to the compliance with capital requirements of Directive 2013/36/EU, including Article 104(2) of Directive 2013/36/EU, and to a potential infringement of these requirements by the provision of the financial support, providing entities and competent authorities should apply the following:
  - (a) The providing entity should submit, and the competent authority should require, a reasoned statement that the institution meets these capital requirements and that the provision of the support would not result in a decrease in the providing entity's capital ratio to a level where the combined buffer requirement is no longer met, or the providing entity should apply for authorisation of non-compliance with these requirements.

- (b) If the providing entity does not meet the combined buffer requirement, or the provision of the support would result in a decrease of the providing entity's capital ratio to a level where the combined buffer requirement is no longer met, the competent authority should decide whether to authorise the provision despite this non-compliance based on the capital conservation plan for the providing entity. The provision of the support and the plan should be consistent.
- (c) When assessing whether to authorise the provision despite the non-compliance with the above mentioned requirements in the light of the capital conservation plan, the competent authority should assess the plausibility of the capital conservation plan and take into account in particular the following:
- (i) The expected timeframe for the restoration of the Common Equity Tier 1 capital of the providing entity;
  - (ii) the significance of the capital shortfall;
  - (iii) the best interest of the providing entity, including indirect benefits resulting from a stabilisation of the group as a whole;
  - (iv) the purpose of the capital buffers concerned; and
  - (v) the risks and benefits of the authorisation for financial stability.
- (d) If the providing entity is the subsidiary of the receiving entity, or the providing entity and the receiving entity are subsidiaries of the same group entity, the provision of the support should not result in a decrease of its capital ratio to a level where the combined buffer requirement is no longer met. However, the competent authority may authorise the provision despite the non-compliance with these requirements under extraordinary circumstances based on the assessment of the criteria set out under point (c) above, in particular if this is necessary to prevent
- (i) the failure of the receiving entity which would otherwise be likely,
  - (ii) the destabilisation of the group as a whole resulting from this failure, and
  - (iii) adverse effects on financial stability resulting from the destabilisation of the group.

The competent authority should take into account information provided by the competent authority responsible for the receiving entity.

<b>Question 3:</b>
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**What rules do you deem appropriate for capital requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

**Question 4:**

**How will the rules for capital requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated?**

- (e) If the competent authority of the providing entity authorises the provision despite the non-compliance, it should specify the maximum duration and the conditions of the non-compliance in its decision.
- (f) Points (a) to (e) are without prejudice any waivers pursuant to Articles 7 or 15 of Regulation (EU) No 575/2013.

10. With respect to the compliance with liquidity requirements of Directive 2013/36/EU, including Article 105 of Directive 2013/36/EU, providing entities and competent authorities should apply the following:

- (a) The providing entity should either submit, and the competent authority should require, a reasoned statement that the institution meets the applicable liquidity requirements and that the provision of the support would not result in a liquidity outflow such that applicable liquidity requirements under Article 86 and Article 105 of Directive 2013/36/EU would not be met, or the providing entity should apply for authorisation of non-compliance with these requirements.
- (b) If the providing entity does not meet applicable liquidity requirements or the provision of the support would result in a liquidity outflow such that applicable liquidity requirements under Article 86 and Article 105 of Directive 2013/36/EU are no longer met, the competent authority should decide whether to authorise the provision despite this non-compliance. In this case the institutions should submit, and the competent authority should require, the submission of a plan for eliminating the non-compliance.
- (c) When assessing whether to authorise the provision of the support despite the non-compliance with the above mentioned requirements, the competent authority should take into account the following:
  - (i) The period of time during which the providing entity does not comply with the relevant liquidity limits;

- (ii) the significance of the non-compliance;
  - (iii) the providing entity's plan for eliminating the non-compliance;
  - (iv) the best interest of the providing entity, including indirect benefits resulting from a stabilisation of the group as a whole; and
  - (v) the impact on financial stability.
- (d) If the providing entity is the subsidiary of the receiving entity, or the providing entity and the receiving entity are subsidiaries of the same group entity, the provision of the support should not result in a liquidity outflow such that applicable liquidity requirements under Article 86 and Article 105 of Directive 2013/36/EU are no longer met. However, the competent authority may authorise the non-compliance with these requirements under extraordinary circumstances based on the assessment of the criteria set out under point (c) above, in particular if this is necessary to prevent
- (i) the failure of the receiving entity which would otherwise be likely,
  - (ii) the destabilisation of the group as a whole resulting from this failure, including indirect benefits resulting from a stabilisation of the group as a whole, and
  - (iii) adverse effects on financial stability resulting from the destabilisation of the group.
- The competent authority should take into account information provided by the competent authority responsible for the receiving entity.
- (e) If the competent authority of the providing entity authorises the provision despite the non-compliance of any of these liquidity requirements, it should specify the maximum duration and the conditions of the non-compliance in its decision.
  - (f) Points (a) to (e) above are without prejudice to any waiver of liquidity requirements pursuant to Article 8 of Regulation (EU) No 575/2013.

**Question 5:**

**What rules do you deem appropriate for liquidity requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

**Question 6**

**How will the rules for liquidity requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated**

11. In determining whether the provision of financial support complies with the large exposures requirements of Directive 2013/36/EU and Regulation (EU) No 575/2013, providing entities and the competent authority should assess:

- (a) Whether the providing entity complies with the relevant provisions of Regulation (EU) No 575/2013 relating to large exposures, including any national legislation exercising the options provided therein, at the time the support is provided;
- (b) Whether, post provision of the support, the providing entity will continue to comply with the relevant provisions of Regulation (EU) No 575/2013 relating to large exposures, including any national legislation exercising the options provided therein.

12. If provision of the support would cause the providing entity to cease to comply with the relevant limitations of Regulation (EU) No 575/2013 relating to large exposures, including any national legislation or supervisory decisions of general application exercising options provided in those provisions, the competent authority should decide whether to authorise the provision despite this non-compliance taking into account the following:

- (a) The period of time during which the providing entity does not comply with the relevant exposure limits;
- (b) the significance of the non-compliance;
- (c) the providing entity's plan for eliminating the non-compliance;
- (d) the best interest of the providing entity, including indirect benefits resulting from a stabilisation of the group as a whole; and
- (e) the impact on financial stability.

If the competent authority of the providing entity authorises the provision despite the infringement of any large exposures requirement, it should specify the maximum duration and the conditions of the infringement in its decision.

## Title III- Final Provisions and Implementation

These guidelines apply from 1 January 2015.

These guidelines should be reviewed by 31 December 2016.



## 6. Draft implementing TS on form and content of the description of group financial support agreements

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**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements according to Directive 2014/59/EU of the European Parliament and of the Council**

of **XXX**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of 15 May 2014 of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>2</sup> and in particular Article 26(2) thereof,

Whereas:

- (1) Chapter III of Directive 2014/59/EU sets rules for agreements to provide financial support among a Union parent institution, or an entity referred to in point (c) or (d) of Article 1(1) of Directive 2014/59/EU and its subsidiaries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, provided that the entity receiving the support meets the conditions for early intervention. This allows transfers of funding in a situation where the group entity is in severe distress. To make informed investment decisions, creditors and investors need transparency regarding risks and potential obligations resulting from these agreements and the chances of a recovery of the group resulting from the support agreement. Therefore the agreement should be in a form easily accessible to the public, comparable to financial statements.
- (2) The general terms of the agreement to be disclosed should include relevant information, such as the maximum amount of support, the principles for calculation of the consideration for the provision of the support, a general description of the maturity profile and the maximum term of loans provided as support. At the same time the disclosure should respect the need for confidentiality of more specific information.

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<sup>2</sup> OJ L 173, 12.6.2014, p.190.



- (3) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.
- (4) The European Supervisory Authority (European Banking Authority) has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

*Article 1- Subject Matter*

This Regulation sets a standard concerning the form and content of the description of the general terms of a group financial support agreement pursuant to Article 19 of Directive 2014/59/EU and the names of the group entities that are party to it.

*Article 2 – Form of disclosure*

Disclosures under this regulation shall be made on the website of each institution that is a party to the support agreement in a form that ensures accessibility to the public in the same degree as the form established for the non-quantitative information included in the financial statements of the group. The disclosure should be made without delay following the conclusion of the group financial support agreement and updated immediately following any revision of the agreement.

*Article 3 – Terms to be disclosed*

1. Institutions shall disclose at least the following information:

- (a) The names of the entities covered by the support agreement;
- (b) the form the support may take, and whether transactions between the beneficiary and a third party are covered;
- (c) to which extent the agreement is reciprocal. If the agreement is not fully reciprocal, the information should differentiate between the different parties following the different terms of agreement;
- (d) the limitations for the support of each form of support;
- (e) the principles for calculation of the consideration for the provision of the support and how they relate to market conditions at the time of the support;
- (f) a general description of the seniority, the maturity profile and the maximum term of loans provided as support;
- (g) a general description of the circumstances or indicators relating to the receiving entity and the providing entity that trigger the provision of the support; and
- (h) a general description of collateral and margin requirements.

Disclosure shall cover the information relevant for the institution concerned. This includes information on the terms of the agreement relating to other group entities where it may

affect that institution. Information that is not applicable shall be indicated as ‘non-applicable’.

2. In addition, the disclosure shall be accompanied by a statement that the provision of the support is subject to the conditions under Article 23 of Directive 2014/59/EU and to the right of the competent authority to prohibit or restrict the provision.

**Question 7:**

**Should a description of additional terms be disclosed? Are there any elements that in your view should not be disclosed?**

*Article 4*

This Regulation shall enter into force on the the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply immediateiy.

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

Done at Brussels,

*For the Commission  
The President*

*On behalf of the President*

*[Position]*

## 7. Accompanying documents

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### 7.1 Draft cost- benefit analysis / impact assessment

#### Introduction

Article 23(2) of Directive 2014/59/EU mandates the EBA to develop draft RTS and to issue guidelines on conditions for the provision of group financial support to a group entity that meets the conditions for early intervention.

As per Article 10(1) and 16(2) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any draft guidelines and RTS developed by the EBA shall be accompanied by a cost and benefit analysis. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

This annex presents the impact assessment of the policy options considered in these RTS and guidelines. The lack of systematic publicly available data on intra-group funding represents a difficulty in analysing the role this funding plays in stabilizing/destabilizing the banking sector in crisis times. As a result the present impact assessment is mainly qualitative and relies on academic papers.

#### Policy background

For the broader interest of financial stability Directive 2014/59/EU recognises the objective of restoring the financial stability of a banking group as a whole, while maintaining adequate safeguards to avoid destabilizing effects on affiliated providing entities. Pursuant to Article 19(4), Member States shall remove any legal impediment in national law to intra-group financial support transactions.

Therefore, Article 23 stipulates a number of conditions, which must be satisfied to permit one group entity (parent, subsidiary or sister company) to provide financial support to another group entity that meets the conditions for early intervention. Competent authorities have to assess these conditions when deciding on authorising the provision of support (Article 25). The conditions contain safeguards relevant for the protection of the entity providing the support and its creditors, as well as for the financial stability of the entities and the financial system as a whole, including public interests.

#### Baseline

***Cross-border activities are high in the EU banking sector***

Cross-border activities are very large in the EU due to the legislative efforts that have been made to create a single market and due to the common currency within the euro area. Around 28% of the credit institutions that operate in the EU are foreign-controlled subsidiaries and branches and they account for 22% of the total EU banking assets (see Table 1).

**Table 1: Number and total asset of credit institutions operating in the EU (EUR Billions)**

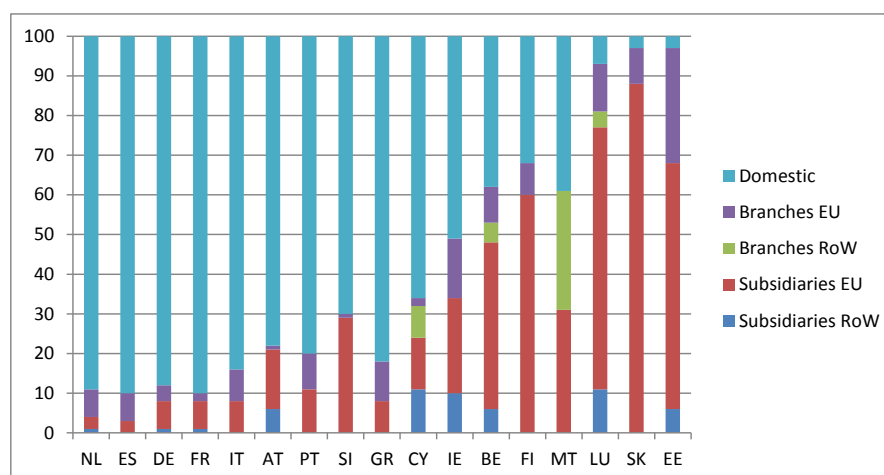
	Number of credit institutions			Total assets		
	Domestic	Foreign-controlled subsidiaries and branches	share of foreign controlled subsidiaries and branches	Domestic	Foreign-controlled subsidiaries and branches	share of foreign controlled subsidiaries and branches
2010	3,727	1,051	28%	34,638	8,289	24%
2011	3,694	1,046	28%	35,926	8,978	25%
2012	3,609	1,032	29%	35,471	8,136	23%
2013 (30 june)	3,593	1,018	28%	34,426	7,499	22%

Source: ECB/ Consolidated Banking Data

In some EU Member States the banking sector is dominated by non-domestic banks which in some cases have a share of more than 80% or 90% of total domestic banking assets (Luxembourg, Slovakia, Estonia) (See Chart 1).

In addition, the foreign presence in the form of bank subsidiaries supervised by the host authorities as opposed to foreign branches supervised by home authorities largely prevail in terms of euros areas banking assets (See Table 1).

**Chart 1: Composition of the banking sectors assets in euro area countries by type of credit institutions in 2012**



Source: ECB/ Consolidated Banking Data

***Recent events shed light on the importance of intra-group asset transferability in crisis management.***

Intra-group financial support may take different forms (transfers of capital, of collaterals, interbank lending, guarantees, liquidity back up facilities) and it needs to be promptly implemented in case of financial crisis. Intra-group transfers of are very common in the normal course of business, but in times of distress, access to internal intra-group liquidity flows may become even more important as it can be used for recovery purposes in order to provide the parent company (upstream support) or the branches or subsidiaries (downstream support) with vital funding.

As shown by De Haas and Van Lelyveld, (2011<sup>3</sup>) an efficient intra-group financial framework has positive effects on financial stability. Several case studies came to the conclusion that the existence of an efficient European intra-group banking network in the Central Eastern and Southeastern Europe (CESEE) was a crisis mitigating factor when parent companies were able to carry on providing funding (Berglöf et al. 2009<sup>4</sup>). The role of parent funding in helping Swedish subsidiaries by maintaining credit supply in Baltic States over 2007-2009 was also highlighted by the BIS (2010).

***Current legal framework on intra-group support is underdeveloped***

There is no specific EU legal framework for intra-group financial support. The only substantial restriction is the large exposure regime which limits the intra-group transactions to 25% of the respective institution's own funds.

The terms and conditions for intra-group asset transfers are currently governed by national laws or case law. In some countries for instance asset transfers can be subjected to authorisation. As an example, in crisis situation, Portuguese supervisory authorities may decide that transfers must be previously authorised. Some Member States also require direct or indirect fair compensation for the entity which provides the support. In Spain for instance, there is a legal regime (and disclosure rules) intended to prevent potential abuses and in Poland sufficient credit worthiness is required from borrowers<sup>5</sup>.

***Single jurisdiction and single supervisory mechanism***

The conditions for the provision of group financial support focus on the perspective of the providing entity, and they are assessed by the competent authority responsible for the providing entity also taking into account information received from the competent authority responsible for the receiving entity. As support agreements and the decision on the provision of the support are

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<sup>3</sup> R. De Haas and I. Van Lelyveld EBRD, (December 2011) *Multinational banks and the global financial crisis: weathering the perfect storm?* WP135

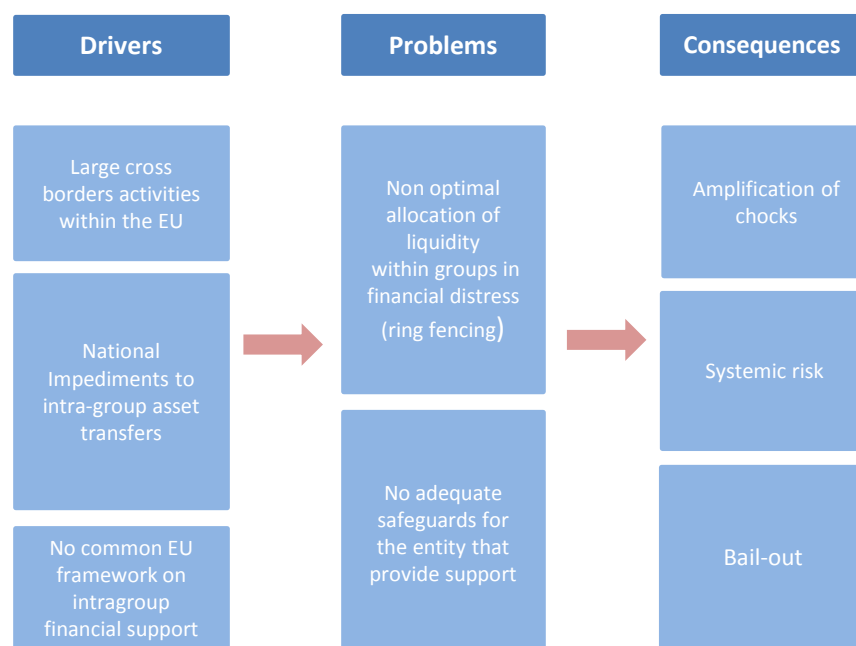
<sup>4</sup> E. Berglöf, Y. Korniyenko, A. Plekhanov, J Zettelmeye, EBRD, (November 2009) *Understanding the crisis in emerging Europe, WP 109*

<sup>5</sup> European Commission (2008). *Report on asset transferability*.

legally necessary and valuable to overcome potential legal obstacles to the provision of the support, for example in the case of temporary breaches of legal requirements or impediments stemming from other branches of law (such as corporate law), the RTS and guidelines are relevant also in cases where there is only one competent authority responsible for both the providing and the receiving entity. However, apparently if there is only one competent authority responsible for both entities (for example when both are resident in the same jurisdiction, or both are under direct supervision of the SSM), there would be no need for ensuring the flow of information and coordination between two competent authorities. Moreover there may be a lower risk of excessive safeguards on the part of the competent authority of the providing entity. In so far the costs of coordination and the risk of an inappropriate ring-fencing would be lower in cases where both group entities are under the direct supervision of the same competent authority, the added value provided by the intragroup financial support agreement could be lower.

## Problem identification

**Chart 2: Problem identification**



This fragmented framework does not provide for a clear and efficient *modus operandi* in crisis situations. The current legal framework gives rise to two main contradictory problems. On one hand it does not allow for an optimal allocation of resources within groups in financial distress. On the other hand domestic supervisors should prevent intra-group transactions that may jeopardise the solvency of foreign subsidiaries.

### ***Obstacles to optimal allocation of liquidity within groups in financial distress***

The financial crisis clearly demonstrated that cross-border intra-group support may be difficult in stressed situations. For instance, in some countries where cross-border groups were placed under resolution, ring-fencing of the assets of a bankrupt group (Lehman Brothers, Kaupthing bank, Landsbanki) have been observed.

### ***Appropriate safeguards for entities that provide financial support***

On the other hand, when financial support is actually provided to a distressed entity within the banking group, there may be no clear safeguards to protect the providing entity. The use of intra-group financial support may increase instability by channelling resources away from affiliates and may jeopardise the financial situation of foreign subsidiaries. As the foreign bank subsidiaries may have dominant positions in host countries banking sectors, especially in the new Member States, some studies show that intra-group financial supports have created a serious risk to the soundness of the financial systems in those regions. In addition, the difficulties faced by a single subsidiary might not only affect one country but also multiple several countries at the same time due to the network of its own subsidiaries (Allen et al. 2012).<sup>6</sup>

### Objectives of the RTS and of the guidelines

#### ▪ General objective

The present RTS and guidelines aim at providing a harmonised EU framework to specify the conditions national competent authorities have to assess when permitting an affiliated entity to provide intra-group financial support to another entity of the group.

#### ▪ Specific objectives

The specific objectives of the draft RTS and guidelines are to:

- Avoid counterproductive ring-fencing of capital and liquidity and to overcome any other obstacles to an optimal allocation of liquidity in groups in financial distress, especially in cross border groups;
- Protect providing affiliated entities, and their creditors and customers, against disproportionate detrimental impact on their financial robustness;
- Strengthen financial stability and avoid the amplifications of shocks;
- Limit the recourse of public support (bail-out) in case of failure;
- Harmonise practices across jurisdictions.

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<sup>6</sup> F. Allen, A. Hryckiewicz, O.Kowalewski, G.Tümer-Alkan, January 2012 *Transmission of Bank Liquidity Shocks in Loan and Deposit Markets: The Role of Interbank Borrowing and Market Monitoring*,

## Policy options

When drafting these guidelines and RTS, the EBA has considered several options under three main areas:

### **Assessment of potential adverse developments and its effect on the group**

**Option 1: Formal stress tests.** Under option 1, institutions would be required to run a formal stress test to assess potential adverse development and their effect on the group entities concerned.

**Option 2: Flexible approach on how to assess potential adverse developments.** Under option 2 competent authorities are given broader discretion when deciding how potential adverse developments should be assessed by banking groups when requesting an authorisation for the provision of the support.

### **Assessment of the credit profile of the receiving entity**

**Option 1: Credit assessment.** Option 1 requires credit institutions to provide competent authorities with an assessment of the credit profile of the receiving entity that would be comparable to the one that a bank would perform when deciding to grant a loan to a third party (which may include additional elements to those listed in the RTS and the guidelines or follow different criteria).

**Option 2: No credit assessment.** Option 2 does not explicitly require credit institutions to perform a formal assessment of the credit profile of the receiving entity.

### **Conditions to be taken into account to allow a providing entity to depart from the minimum liquidity and capital requirements**

**Option 1: Principle based approach with identical conditions applicable to both upstream and downstream support.** When deciding whether an institution can depart from the liquidity and capital (conservation and systemic) minimum requirements, National competent authorities are requested to look at the following conditions for both upstream and downstream support:

- The expected timeframe for the restoration of the CET1/liquidity requirements,
- The size and the significance of the capital/liquidity shortfall,
- The best interest of the providing entity,
- The impact on financial stability.



**Option 2: Additional conditions for upstream support.** In addition to all the conditions listed in Option 1, Option 2 allows the use of capital and liquidity buffers in case of upstream support only under very exceptional circumstances.

**Option 3: Support implying a non-compliance with capital and liquidity buffers only under exceptional circumstances.** Option 3 allows the use of capital and liquidity buffers for both upstream and downstream support only under very exceptional circumstances.

### Comparison of the policy options

Area	Policy options	Advantages	Disadvantages
Assessment of the impact of the group financial support	<b>Option 1:</b> Formal stress test	Enable a comprehensive and detailed assessment of the potential impact.	<p>Costly to design.</p> <p>Need to agree on the hypothesis and methodology in a very short period of time.</p> <p>Assessment of the outcome may be difficult to interpret and time consuming.</p> <p>Given the diversity of banks' business models, this "one size-fits all" approach may be too burdensome for some banking groups.</p>
	<b>Option 2:</b> Flexible approach to assessment of potential adverse developments	<p>More flexible as it allows a case by case basis.</p> <p>Easy to implement.</p>	<p>Less clear data basis.</p> <p>Possibility of underestimating the risks.</p> <p>Would create differences in treatment between banking groups across jurisdictions.</p> <p>Less harmonisation.</p>
Assessment of the credit profile of the receiving institutions	<b>Option 1:</b> Credit assessment similar to what would be done by a bank when deciding whether a loan is granted to a third party.	<p>Maximum protection for the providing entity.</p> <p>Enable a transparent assessment of the efficiency/necessity of the</p>	<p>Costly to design and time consuming for banking groups.</p> <p>May not take into account the specific intra-group</p>

		financial support measures.  More guidance provided to competent authorities when deciding whether or not a financial support may be granted.	situation.  May add burden and delay to the financing process.
	<b>Option 2:</b> No formal credit assessment	No additional operational and administrative cost on institutions and NCAs.	May exclude from the assessment substantial elements which are relevant for the risk management of the providing entity.
<b>Conditions to be taken into account to allow institutions not to comply with the minimum liquidity and capital requirements</b>	<b>Option 1:</b> Principle based approach with identical conditions applicable to both upstream and downstream support.	Enhance symmetric information when NCAs handle cross-border cases.  Ensure the flexibility to make case-by-case decisions while maintaining level playing field for institutions.	Large room for interpretation as some conditions are generic and NCAs may handle cases on an ad-hoc basis.
	<b>Option 2:</b> Additional conditions for upstream support.	Better capture specific risks stemming from upstream support (risks on financial system of the host countries).  Ensure higher protection of sub-group entities.	Distinction between upstream and downstream support adds complexity to the framework.  Additional cost of implementation on NCAs (cost to design the additional condition - definition of the “exceptional circumstances” - and to monitor its implementation).  Create uneven level playing field between parent companies and sub-group entities.
	<b>Option 3:</b> Support implying a non-compliance with capital and liquidity buffers only under exceptional circumstances.	Maximum harmonisation.  Maximum safeguards for all providing institutions.	Restrict the ability of all entities to provide financial support which could increase the risk of capital and liquidity ring-fencing and minimise positive effects of an optimal allocation of resources in a stress situation.

### Preferred options

Assessment of the potential adverse development caused by intra-group financial support: **Option 2** (no formal stress test) is more suitable. Formal stress tests would be too burdensome

for some specific business models and may be very difficult to assess promptly by the competent authority in case a financial support has to be provided urgently.

Assessment of the credit profile of the receiving entity: Option 1 (credit assessment) would be more suitable, if it was needed as a source of additional elements to be assessed under the assessment of the conditions for the support. As there are no elements apparent that would permit a better assessment of the efficiency and necessity of the financial support, the added value is outweighed by the costs for institutions and the lower degree of harmonisation and legal certainty. Therefore **Option 2** is more in line with the objective of Chapter III.

Conditions under which the providing entity is allowed not to comply with liquidity and minimum capital requirements: **Option 2** (Differentiated conditions applicable to upstream and downstream support) is most suitable, as it will ensure an appropriate harmonisation across jurisdictions and help realising the advantages of the option to provide group financial support intended by the Directive. Option 3 would add complexity to the framework and limit the ability of entities to provide financial support thus increasing the risk of capital and liquidity ring-fencing. Option 1 may not provide adequate safeguards for subsidiaries and their investors and customers, and for the financial stability of the jurisdiction where they are active.

## 7.2 Overview of questions for Consultation

### **Question 1 (*The question is relevant with regard to the RTS and the guidelines*):**

**Are there further elements of a credit assessment which would be useful in this context when assessing whether the financial support is expected to redress the financial difficulties of the receiving entity and the further conditions (e.g. the terms of the provision of the support and the prospect of the payment of consideration and repayment)? Please specify.**

### **Question 2 (*The question is relevant with regard to the RTS and the guidelines*):**

**How could the interest of the providing entity and the group as a whole be measured and reflected in the terms of the provision of the support? What information could be used to inform the assessment of the terms, also with respect of non-quantifiable costs and benefits?**

### **Question 3:**

**What rules do you deem appropriate for capital requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

### **Question 4:**

**How will the rules for capital requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated?**

**Question 5:**

**What rules do you deem appropriate for liquidity requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

**Question 6**

**How will the rules for liquidity requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated?**

**Question 7:**

**Should a description of additional terms be disclosed? Are there any elements that in your view should not be disclosed?**