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EBA/GL/2015/17

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# Guidelines

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specifying the conditions for group financial support under  
Article 23 of Directive 2014/59/EU

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# 1. Executive summary

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Article 23(2) and (3) of 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 mandates the EBA to develop draft regulatory technical standards (RTS) and to issue guidelines on the various conditions for the provision of financial support that must be satisfied to permit one group entity to provide financial support based on a support agreement in accordance with Article 19 to another group entity that meets the conditions for early intervention. Chapter III of the Directive aims to enable cross-border groups to allocate liquidity optimally when the group is in financial distress. The purpose is to set out a clear, harmonised framework, facilitate group support and enhance legal certainty despite existing legal obstacles, while maintaining adequate safeguards for financial stability, including prudential requirements and public interests such as the resolvability of the entity providing the support, as well as for the interests of the group entities concerned and their respective creditors. It should be noted, however, that a support agreement under Chapter III is not a condition for providing liquidity within a group, in particular with regard to regular liquidity management within a group. Furthermore, the provisions do not affect contractual or statutory liability arrangements between institutions which protect the participating institutions through cross-guarantees and equivalent arrangements.

The conditions relate to the expected success of the support, to the interest of the group as a whole, to the terms of the support (taking into account the interest of the providing entity in the stabilisation of the group as a whole) and various prudential requirements applying to the providing entity, and to the impact on financial stability and the resolvability of the providing 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 the business model, the current market situation and potential further adverse developments. Whether or not 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. They 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 responsible for the receiving entity. The assessment of whether the support has the objective of preserving or restoring the financial stability of the group as a whole and is in the interest of the providing entity compares the expected situations if support were and were not provided. It takes into account direct and indirect benefits for the entity providing the support, including those resulting from a recovery of the group as a whole, as well as the risks that would result from the destabilisation of the group.

The prospect that a loan will be reimbursed and the consideration paid will be assessed based on a comprehensive analysis of risk factors which may influence the ability of the receiving entity to meet its obligations.

Article 23 of Directive 2014/59/EU 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 of support despite non-compliance where necessary. These guidelines set out principles for the assessment of whether such authorisation should be granted.

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

## 2. Background and rationale

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, among other things, prudential requirements applying to the providing entity. The following overview groups the conditions into those for which the EBA is mandated to draft RTS and those for which it is mandated to draft guidelines.

Conditions in Article 23(1)	EBA deliverable	Summary of content
(a) Reasonable prospect that the support will redress 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 with 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(4).	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(4).
(d) Reasonable prospect that the consideration will be paid and, in case of a loan, the	GL	Analysis of risk factors which may influence the ability of the receiving entity to meet

Conditions in Article 23(1)	EBA deliverable	Summary of content
loan will be reimbursed.		its obligations, evaluation of collateral.
(e) The support would not jeopardise the liquidity or solvency of the providing entity.	RTS	The assets of the providing entity can be reasonably expected to be at all times greater than its liabilities and it can be reasonably expected to be able to pay all of its liabilities as they fall due, taking into account potential adverse developments, the default risk of the receiving entity and the loss given default.
(f) The support would not create a threat to financial stability.	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.
(g) The support would not cause the providing entity to breach CRD IV/CRR capital and liquidity 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.
(h) The support would not cause the providing entity to breach CRD IV/CRR large exposure requirements.	GL	Large exposure requirements have to be complied with, unless authorised by

Conditions in Article 23(1)	EBA deliverable	Summary of content
(i) The support would not undermine the resolvability of the providing entity.	RTS	<p data-bbox="1043 443 1406 510">competent authorities. Principle-based approach.</p> <p data-bbox="1043 568 1406 801">The provision of the support does not make the implementation of the resolution strategies substantively less feasible or less credible.</p>

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. In the broader interests 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 prevents 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 from 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 a group.

Article 23 of Directive 2014/59/EU stipulates a number of conditions which must be satisfied to permit one group entity (a 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 the extent to which these conditions are met when deciding whether to authorise 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 these conditions (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.

Recital 38 of the Directive makes clear that the assessment of the financial support should take into account the interest of the group as a whole and the interdependency of the entities of the same group. Therefore, the assessment of the objective of the provision of support and whether

it is in the interest of the providing entity should adequately 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.

When assessing whether there is a reasonable prospect that the consideration for financial support will be paid and that it will be reimbursed, 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 and its default risk. This assessment should be consistent with comparable assessments under the further conditions set out in Article 23.

In addition, Article 23 empowers competent authorities to authorise non-compliance with prudential requirements for capital, liquidity and large exposures. The guidance on how this power should be used should allow appropriate flexibility for competent authorities to analyse the situation of each group on a case-by-case basis, while providing sufficient clarity for firms and investors. In accordance with the interest of creditors and (minority) shareholders in the group entities concerned, the guidelines differentiate between upstream and downstream support. When assessing, in the light of the capital conservation plan, whether or not to authorise the provision of support despite non-compliance with prudential requirements, the competent authority should assess in particular the significance of this non-compliance and the expected timeframe for remedying it, as well as the interests of the providing entity and the risks and benefits of the authorisation for financial stability. Where upstream support is provided, resolution authorities should authorise non-compliance only under extraordinary circumstances, based on an assessment of the same criteria, and should in addition analyse if the provision is necessary to prevent the failure of the receiving entity, the destabilisation of the group as a whole resulting from this failure, and adverse effects on financial stability resulting from the destabilisation of the group.



## 3. EBA guidelines specifying the conditions for group financial support

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### Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

### Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, 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 [*insert date: 2 months after the publication of the translations of the guidelines in all EU languages on the EBA website*]. 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 available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2015/17'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 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) if financial support is provided in the form of a loan, the principal of the loan; (ii) if 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' should be understood in accordance with the description laid down in Article 19(7), letter (b), 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 the providing entity 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, with

(b) the risks for the group resulting from the provision of financial support, including the default risk of the receiving entity and the loss to 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, with
  - (b) the risks for the providing entity resulting from the provision of financial support, including the default risk of the receiving entity and the loss to the providing entity given default of the receiving entity after receiving the support. The analysis of the default risk of the receiving entity should be based on the elements set out in Article 2 of the RTS specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU. This is without prejudice to considering on a case-by-case basis and at the discretion of the competent authority responsible for the providing entity, for the purpose of the comparative analysis of benefits and risks, further relevant elements the providing entity would consider in a credit assessment when deciding on granting a loan on the basis of all information available to the providing entity.
5. The analysis under paragraphs 3 and 4 should take into account the requirements of sound capital and liquidity management at individual entity and group level 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 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.
6. When assessing whether there is a reasonable prospect that the 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 the receiving entity's default risk, considering 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; and
  - (c) an analysis of the financial situation of the receiving entity 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, to 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.

7. When assessing whether the provision of financial support would create a threat to financial stability, in particular in the Member State of the group entity providing the support, the providing entity and the competent authority should analyse at least the following factors:
  - (a) the significance of the providing entity for the financial stability of the Member State where it is established, of other Member States and of the Union, taking into account interdependencies between the providing entity and other entities which are significant for financial stability, in particular through membership in an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 575/2013;
  - (b) the financial condition of the providing entity and of the group members which are significant for its stability;
  - (c) the probability of future developments having a negative impact on the providing entity or on group members which are significant for the stability of the providing entity, or on the financial stability of the Member State where the providing entity is established, of other Member States or of the Union; and
  - (d) the risk that the provision of the support will divest the providing entity of the liquidity or assets which will be necessary to support other group members that are important for the stability of the group and financial stability in the near future.
8. When analysing the impacts on 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 compliance with the capital requirements of Directive 2013/36/EU, including Article 104(2) of Directive 2013/36/EU, and to the potential infringement of these requirements by the provision of financial support, providing entities and competent authorities should apply the following:
  - (a) The providing entity should submit to the competent authority 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 in the providing entity's capital ratio to a level where the combined buffer requirement would no longer be 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 should be consistent with the capital conservation plan.
- (c) When assessing whether to authorise the provision of support despite non-compliance with the abovementioned 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 the 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) Without prejudice to points (a), (b) and (c) above, if the providing entity is a subsidiary of the receiving entity, or the providing entity and the receiving entity are subsidiaries of the same group entity, the competent authority, when assessing whether to authorise the provision of support despite non-compliance with these requirements, should also take into account whether the provision of the financial support 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.
- (e) If the competent authority for the providing entity authorises the provision of support despite non-compliance, it should specify the maximum duration and the conditions of the authorisation despite non-compliance in its decision.

- (f) Points (a) to (e) are without prejudice to any waiver pursuant to Articles 7 or 15 of Regulation (EU) No 575/2013.

10. With respect to compliance with the 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 to the competent authority 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 Articles 86 and 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 Articles 86 and 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 situation, the institutions should submit a plan for eliminating the non-compliance to the competent authority.
- (c) When assessing whether to authorise the provision of support despite non-compliance with the abovementioned 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 the stabilisation of the group as a whole; and
  - v) the risks and benefits of the authorisation for financial stability.
- (d) Without prejudice to points (a), (b) and (c) above, if the providing entity is a subsidiary of the receiving entity, or the providing entity and the receiving entity are subsidiaries of the same group entity, the competent authority, when assessing whether to authorise the provision despite non-compliance, should also take into account whether the provision of the financial support 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 the 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 for the providing entity authorises the provision despite non-compliance with any of these liquidity requirements, it should specify the maximum duration and the conditions of the authorisation despite 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.

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; and
- (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 of support 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 the stabilisation of the group as a whole; and
- (e) the risks and benefits of the authorisation for financial stability.

If the competent authority for 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 authorisation despite non-compliance in its decision.

### Title III- Final Provisions and Implementation

These guidelines apply from *[insert date: 2 months and 1 day after the publication of the translations of the guidelines in all EU languages on the EBA website]*.

These guidelines should be reviewed within one year from the date of application.



## 4. Accompanying documents

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### 4.1 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 the conditions for the provision of group financial support to a group entity that meets the conditions for early intervention.

In accordance with Article 10(1) and Article 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 must 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 therefore presents an 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 stabilising/destabilising the banking sector in crisis times. As a result the present impact assessment is mainly qualitative and relies on academic papers.

#### Policy background

In the broader interests 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 destabilising 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 (a 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 the extent to which these conditions are met when deciding whether to authorise 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 high 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 total EU banking assets (Table 1).

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

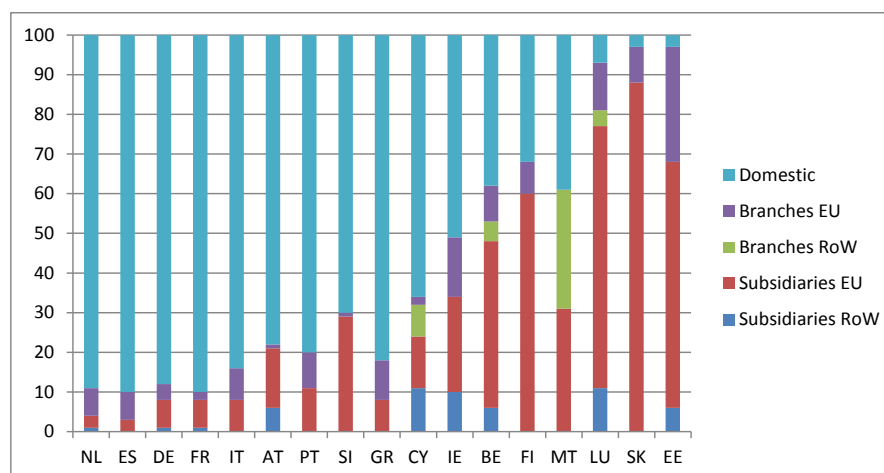
	Number of credit institutions			Total assets		
	Domestic	Foreign-controlled subsidiaries and branches	share of foreign controlled subsidiaries and branches	Domestic	Foreign-controlled subsidiaries and branches	share of foreign controlled subsidiaries and branches
2010	3,727	1,051	28%	34,638	8,289	24%
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) (Chart 1).

In addition, a foreign presence in the form of bank subsidiaries supervised by the host authorities, as opposed to foreign branches supervised by home authorities, largely prevails in terms of euro area banking assets (Table 1).

**Chart 1: Composition of the banking sector's assets in euro area countries by type of credit institution 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, transfers of collateral, interbank lending, guarantees, liquidity backup 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 (2009), 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 Central Eastern and Southeastern Europe was a crisis-mitigating factor, as parent companies were able to carry on providing funding (Berglof et al., 2009; EBRD, 2009). The role of parent funding in helping Swedish subsidiaries by maintaining credit supply in Baltic States during 2007–09 was also highlighted by the BIS (2010).

***The current legal framework for 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 intra-group transactions to 25% of the respective institution's own funds.

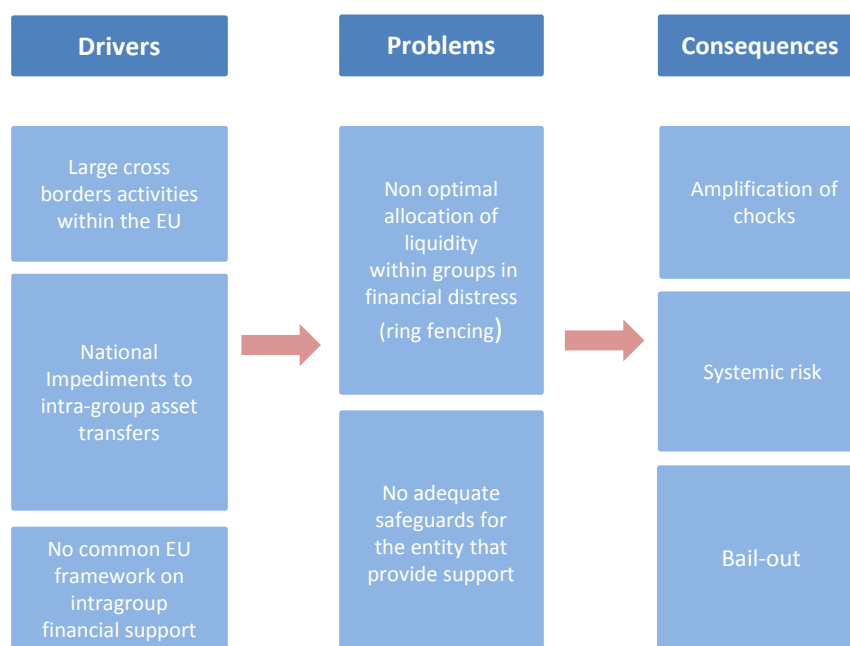
The terms and conditions for intra-group asset transfers are currently governed by national laws or case law. In some countries, for instance, asset transfers can be subject to authorisation. As an example, in a crisis situation, Portuguese supervisory authorities may decide that transfers must be previously 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 creditworthiness is required of borrowers<sup>2</sup>.

## Problem identification

### ***Chart 2: Problem identification***

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<sup>2</sup> European Commission (2008). *Report on asset transferability*.



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 the 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 stress 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) has 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. Some studies show that, as foreign bank subsidiaries may have dominant positions in host countries' banking sectors, especially in the new Member States, intra-group financial support has created serious risks to the soundness of the financial systems in those regions (Allen et al., 2009). In addition, the difficulties faced by a single subsidiary might affect not only one country but multiple countries at the same time due to the network of its own subsidiaries (Allen et al., 2009).

#### Objectives of the RTS and of the guidelines

## 1. General objective

The present RTS and guidelines aim to provide 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.

## 2. Specific objectives

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

- (c) avoid counterproductive ring-fencing of capital and liquidity and overcome any other obstacles to an optimal allocation of liquidity in groups in financial distress, especially in cross-border groups;
- (d) protect providing affiliated entities, and their creditors and customers, against disproportionate detrimental impact on their financial robustness;
- (e) strengthen financial stability and avoid the amplification of shocks;
- (f) limit recourse to public support (bail-out) in case of failure; and
- (g) harmonise practices across jurisdictions.

## Policy options

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

### **Assessment of potential adverse developments and their 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 developments and their effect on the group entities concerned.

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

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

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

**Option 2: no credit assessment.** Option 2 would not explicitly require credit institutions to perform a formal assessment of the credit profile of the receiving entity in addition to those listed in the RTS and guidelines.

**Option 3: credit assessment on a case-by-case basis within the cost–benefit analysis:** Option 3 would allow competent authorities the flexibility to require further elements of a credit assessment where they were necessary to fully assess the risk of the provision of the support and to balance this risk against the benefits of the provision.

**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 would be 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; and
- the impact on financial stability.

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

**Option 3: support implying non-compliance with capital and liquidity buffers only under exceptional circumstances.** Option 3 would allow 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.	Would enable a comprehensive and detailed assessment of the potential impact.	Costly to design.  Need to agree on the hypothesis and methodology in a very short period of time.

			<p>Assessment of the outcome might be difficult to interpret and time consuming.</p> <p>Given the diversity of banks' business models, this 'one size fits all' approach might be too burdensome for some banking groups.</p>
	<p><b>Option 2:</b> flexible approach to assessment of potential adverse developments.</p>	<p>More flexible, as it allows assessment on 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>
<p><b>Assessment of the credit profile of the receiving institutions</b></p>	<p><b>Option 1:</b> credit assessment similar to that which would be done by a bank when deciding whether to grant a loan to a third party.</p>	<p>Maximum protection for the providing entity.</p> <p>More guidance provided to competent authorities when deciding whether or not financial support may be granted.</p>	<p>Costly to design and time consuming for banking groups.</p> <p>Might not take into account the specific intra-group situation.</p> <p>Might add burden and delay to the financing process.</p>
	<p><b>Option 2:</b> no formal credit assessment.</p>	<p>No additional operational and administrative costs for institutions and NCAs.</p>	<p>Might exclude from the assessment substantial elements which are relevant for the risk management of the providing entity.</p>
	<p><b>Option 3:</b> optional credit assessment as part of the analysis of benefits and risks.</p>	<p>Specific group situation and benefits resulting from the stabilisation of the group as a whole are taken into account.</p>	<p>Might add burden and delay to the financing process; however, costs are limited by making further elements optional.</p>
<p><b>Conditions to be taken into account to allow institutions not to comply with</b></p>	<p><b>Option 1:</b> principle-based approach with identical conditions applicable to both upstream and downstream support.</p>	<p>Would enhance symmetrical information when NCAs handle cross-border cases.</p> <p>Would allow the flexibility to make case-by-case decisions while maintaining</p>	<p>Significant room for interpretation, as some conditions are generic and NCAs might handle cases on an ad hoc basis.</p>

<p><b>the minimum liquidity and capital requirements</b></p>	<p><b>Option 2:</b> additional conditions for upstream support.</p> <p><b>Option 3:</b> support implying non-compliance with capital and liquidity buffers only under exceptional circumstances.</p>	<p>a level playing field for institutions.</p> <p>Better capture of specific risks stemming from upstream support (risks to financial systems of host countries).</p> <p>Would ensure greater protection of sub-group entities.</p> <p>Maximum harmonisation.</p> <p>Maximum safeguards for all providing institutions.</p>	<p>Distinction between upstream and downstream support adds complexity to the framework.</p> <p>Additional cost of implementation for NCAs (cost of designing the additional condition – definition of ‘exceptional circumstances’ – and of monitoring its implementation).</p> <p>Would create an uneven playing field between parent companies and sub-group entities.</p> <p>Would 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.</p>
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### Preferred options

Assessment of the potential adverse developments 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 might make it very difficult for the competent authority to make a prompt assessment if financial support had to be provided urgently.

Assessment of the credit profile of the receiving entity: Option 1 (credit assessment) would ensure the highest extent of risk awareness for institutions and authorities. However, the purpose of Chapter III of Directive 2014/59/EU is to reflect the special situation of a group and to give certainty to institutions and stakeholders. In addition, there are no elements apparent that would permit a better assessment of the efficiency and necessity of the financial support, so it is doubtful if the added value of a mandatory credit assessment is not outweighed by the costs for institutions and the lower degree of harmonisation and legal certainty. Therefore, Options 2 and 3 are more in line with the objective of Chapter III. On the one hand Option 2 might be favourable in terms of harmonisation and legal certainty. On the other hand Option 3 would give authorities the flexibility to require an additional risk assessment, while the absence of a mandatory



requirement avoids the risk of delaying the financing. In addition, the decision would still be made strictly as part of the comparison of both risks and advantages for the group as a whole, in line with the policy objective of the Directive. **Option 3** is therefore most appropriate.

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 to realise the advantages of the option of providing 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 might not provide adequate safeguards for subsidiaries and their investors and customers, and for the financial stability of the jurisdiction where they are active.

## 4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper together with the draft guidelines on the same topic in one single consultation paper.

The consultation period lasted for three months and ended on 4 January 2014. Four responses were received, of which three were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation on both the draft RTS and the guidelines, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

#### *Credit assessment*

Some respondents asked for the inclusion of a credit risk assessment of the receiving entity in the analysis of whether intra-group financial support should be granted in the same way as an assessment would be carried out to decide whether credit should be granted to an entity outside the group ('fully fledged credit assessment'), as they felt that only in this way could the providing entity have a full overview of the risks resulting from the support.

However, it should be noted that most of the relevant elements of this assessment are already implemented under Article 3(1) of the RTS. Furthermore, the results of a regular credit assessment would not adequately reflect the specific situation in a group or the objectives of Article 19 ff. of Directive 2014/59/EU. To balance these positions, the text has been changed such that the providing entity should, first, properly evaluate the risks of providing the support and, second, compare the identified risks with the potential benefits. This means that the option to consider further elements of a credit assessment on a case-by-case basis could be one step within this analysis of risks, costs and benefits, including those resulting from the stabilisation of the group, which should not be separated from the second step of balancing costs and benefits against each other.

#### *Capital and liquidity requirements*

General views are split as to whether allowing the flexibility to authorise breaches of capital or liquidity requirements is appropriate. One respondent expressed concerns that a breach of capital

requirements might generate a problem with the solvency of the providing entity and demanded that group financial support should be provided only to the extent that the providing entity still complies with principal banking regulations. Other respondents argued that too much discretion for national competent authorities to intervene against intra-group financial support to protect national entities should be prevented.

The risks mentioned by the respondents are adequately addressed in Article 23 of Directive 2014/59/EU and in the guidelines and RTS, as non-compliance with capital requirements would be only restrictively permitted under exceptional circumstances. Article 23(1)(g) and (h) speaks of authorisation of the 'infringement' of various requirements. Article 23(1)(e) of Directive 2014/59/EU explicitly sets out the condition that group financial support can be provided only if the solvency and liquidity of the providing entity is not jeopardised. Furthermore, the discretion of the competent authority is precisely framed by guidelines and RTS, which explicitly state in Article 4(b) of the RTS that the terms reflect the best interest of the providing entity.

## Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
Importance of RTS/guidelines.	Some of the respondents who provided general comments noted that the RTS/guidelines are of significant importance for jurisdictions, especially for those that have already implemented restrictions regarding the support.		No amendment.
Discretion for competent authorities.	One respondent stated that too much discretion for competent authorities to intervene against intra-group financial support to protect national entities should be prevented.	Directive 2014/59/EU empowers national authorities to authorise or prohibit intra-group financial support. The specifications made by the RTS and the guidelines result in appropriate constraints on discretion.	No amendment.
No obligation to adopt support agreements.	One respondent suggested making it explicit in the guidelines/RTS that authorities should not be able to require banks to adopt support agreements. In addition it should be clarified that existing contractual or statutory liability arrangements between institutions are not affected by the guidelines/RTS.	Pursuant to Art.19(3) a group financial support agreement does not constitute a prerequisite to provide group financial support to another entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis. Art. 19(2) establishes that Chapter III does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.	No amendment.
<b>Responses to questions in Consultation Paper EBA/CP/2014/30</b>			
Question 1 (the question is relevant with regard to the RTS)	One respondent argued that the final range of elements for the analysis of whether or not group	The use of the assessment for granting loans to	Additions have been

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>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.</p>	<p>financial support should be provided is too narrow and recommended a more prudent approach whereby the providing entity would analyse the situation on a case-by-case basis, including the assessment for granting loans to an entity outside the group ('fully fledged credit assessment').</p>	<p>entities outside the group has been thoroughly discussed while drafting the RTS.</p> <p>On the one hand this could be useful to ensure that the providing entity and the competent authority have a full overview of the risks resulting from the support.</p> <p>On the other hand it should be noted that most of the relevant elements of this assessment are already implemented under Art. 3(1) of the RTS. Furthermore, the results of a regular credit assessment would not adequately reflect the specific situation in a group or the objectives of Art. 19 ff. of Directive 2014/59/EU. To balance these positions, the text has been changed such that the providing entity should, first, properly evaluate the risks of providing the support and, second, compare the identified risks with the potential benefits. This means that the option to consider further elements of a credit assessment on a case-by-case basis could be one step within this analysis of risks, costs and benefits, including those resulting from the stabilisation of the group, which should not be separated from the second step of balancing costs and benefits against each other.</p>	<p>inserted in Art. 4(2) of the RTS and paragraph 4 of the guidelines.</p>
<p>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</p>	<p>One respondent remarked that the text of paragraph 5 of the guidelines is ambiguous; it is unclear if the analysis under paragraphs 3 and 4 should take into consideration the requirements of sound capital and liquidity management at group</p>	<p>The requirements of sound capital and liquidity management should be taken into consideration also at the level of the providing entity, as set out under Art. 23(1)(g) of Directive 2014/59/EU. The wording of paragraph 5 of the guidelines can be</p>	<p>Paragraph 5 of the guidelines has been amended as follows: 'The analysis under paragraphs 3 and 4</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>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?</p>	<p>level only or also at entity level.</p> <p>Suggestions from respondents for additional elements which could be used for further assessment (comments made by one respondent each, if not otherwise marked):</p> <ul style="list-style-type: none"> <li>• the past performance of the receiving entity, as the support should enable the receiving entity to conduct business at the pre-early intervention level (suggested by two respondents);</li> <li>• provisions of group support should be based on prevailing market conditions and facts at the time of providing support;</li> <li>• the reputational impact of allowing a subsidiary to fail; and</li> <li>• the chosen resolution strategy for a group.</li> </ul> <p>One respondent, furthermore, argued that some impacts cannot be assessed within a short time horizon and that some of the elements of the assessment are not easily quantifiable in monetary terms.</p>	<p>clarified.</p> <ul style="list-style-type: none"> <li>• The past performance of the receiving entity is part of the assessment pursuant to Art. 3(b) of the RTS which refers to ‘internal and external causes’ and ‘past, present and expected market conditions’.</li> <li>• Prevailing market conditions are already included in the analysis under paragraph 6(c) of the guidelines, which refers to ‘past, present and expected market conditions’.</li> <li>• The reputational impact is already taken into account under paragraph 5 of the guidelines and Art. 4(2) of the RTS.</li> <li>• The chosen resolution strategy is part of the assessment as set out under paragraph 5 of the guidelines and Art. 6(1) of the RTS.</li> </ul> <p>The assessment is demanding within a short time horizon, but the efforts required would always be proportionate to the time available. The fact that some elements are not easily quantifiable in monetary terms is adequately addressed. The quantification in monetary terms is qualified, in Art. 4(2) of the RTS to ‘the extent possible’ and in paragraph 5 of the guidelines to ‘where possible’.</p>	<p>should take into account the requirements of sound capital and liquidity management <b>at individual entity and group level ...</b></p>
<p>Question 3: What rules do you deem appropriate for capital requirements? Do the criteria</p>	<p>One respondent criticised the ambiguity of the wording, as the providing entity is obliged to</p>	<p>The clarification can be made; however, it should be clear that the statement will be provided in any case,</p>	<p>Clarification in paragraph 9(a) of</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>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?</p>	<p>provide the reasoned statement under paragraph 9(a) of the guidelines, and the competent authority should request it.</p> <p>Another respondent commented that the text of the guidelines and RTS goes further than the text and conditions of Art. 23 of Directive 2014/59/EU: Under paragraph 9(a) and (c) of the guidelines the providing entity seems to be enabled to provide support even if it does not meet capital requirements or combined buffer requirements. The respondent was worried that a breach of capital requirements might generate a problem with the solvability of the providing entity. Intra-group financial support should be provided only to the extent that the providing entity still complies with principal banking regulations. The rule under paragraph 9(c) of the guidelines should therefore be adjusted accordingly, as it might generate problems for both entities.</p> <p>In contrast, another respondent suggested softening the ‘business as usual’ capital and liquidity limits (for example large exposure limits) where group financial support is required or granted. Another respondent pointed out that these limits might limit the effectiveness of the support.</p> <p>One respondent considered the proposals appropriate, as they are aligned with the United Kingdom Prudential Regulation Authority’s existing implementation of capital buffers.</p>	<p>as the guidelines are addressed to institutions and authorities.</p> <p>The guidelines are more specific but do not go beyond the mandate and the wording of Directive 2014/59/EU. Non-compliance with capital requirements may be authorised only under very strict circumstances, which are determined under Art. 23 of Directive 2014/59/EU and specified in the guidelines. Art. 23(1)(g) of Directive 2014/59/EU permits temporary non-compliance of the providing entity with the capital and liquidity requirements of Directive 2013/36/EU if authorised by the competent authority in individual cases. Art. 23(1)(e) of Directive 2014/59/EU clarifies the condition that group financial support can be provided only if the solvency and liquidity of the providing entity is not jeopardised. In any case, the suggestion of ongoing compliance with capital requirements does not lie within the mandate of the EBA, as non-compliance is explicitly granted under strict conditions in Art. 23(1)(g) of Directive 2014/59/EU.</p> <p>The fact that some respondents criticised the prerequisites for the authorisation while others found them too narrow supports the conclusion that the EBA struck an appropriate balance between flexibility to provide support where necessary and safeguards required to preserve stability.</p>	<p>the guidelines and consequential changes.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Question 4: How will the rules for capital requirements, in particular regarding upstream support, impact management decisions on the structure of the group? If you see a negative impact, how could this be mitigated?</p>	<p>One respondent requested that permission for a temporary breach of ratios be considered, to enable provision of group financial support to the extent necessary for the receiving entity.</p>	<p>Temporary non-compliance may be authorised under Art. 23(1)(g) of Directive 2014/59/EU, which provides an appropriate balance between the interest of the providing entity, that of the receiving entity and financial stability.</p>	<p>No amendment.</p>
<p>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?</p>	<p>One respondent suggested further specifying the elements under Art. 10(c) of the RTS such that liquidity coverage ratio, net stable funding ratio, directly applicable liquidity buffers and market conditions must be part of the analysis as well.</p> <p>Another respondent suggested that the limitations of Directive 2013/36/EU and Regulation (EU) No 575/2013 and the strong conditions for group financial support should be applied to liquidity requirements as well.</p> <p>In contrast to the previous response one respondent welcomed the discretion for the competent authority to allow support from a providing entity which is not in compliance with its liquidity requirements and suggested that a similar principle should be applied to capital requirements. It was furthermore proposed that penalties etc. resulting from a breach of the capital or liquidity requirements of the providing entity be waived.</p>	<p>Art. 23(1)(g) of Directive 2014/59/EU refers only to Directive 2013/36/EU, not to Regulation (EU) No 575/2013. Therefore, there is no legal basis for the guidelines to specify criteria for an authorisation of non-compliance with requirements from that regulation, including liquidity coverage and net stable funding ratio. This may be unintentional or due to the staggered introduction of these liquidity requirements; however, there would be no mandate for the EBA to go beyond Directive 2014/59/EU.</p> <p>Non-compliance with capital requirements may be authorised under Art. 23(1)(g) of Directive 2014/59/EU. There are no penalties if the temporary non-compliance is authorised.</p>	<p>No amendment.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>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?</p>	<p>One respondent suggested expanding permission for non-compliance with liquidity requirements under extraordinary circumstances as set out under Art. 10(d) of the RTS if the providing entity is the parent company and the receiving entity is its subsidiary.</p> <p>Two respondents noted that the rules might privilege regional funding models over centralised funding models, which needs to be considered in the context of the appropriate resolution strategy (SPE or MPE). This might entail risks if there were a regional-based market-wide event, which could then affect all countries in a region.</p>	<p>Differentiation of upstream and downstream support is justified with a view to the different implications the support has for the interests of shareholders and creditors.</p> <p>The EBA considers that the impact of these regulations on the funding model should be kept in mind by competent authorities; the resolution strategy is already part of the assessment by the authority as set out under recital 5 and Art. 6(1) of the RTS. Safeguards are limited to what is necessary to ensure stability.</p>	<p>No amendment.</p>

# Confirmation of compliance with Guidelines

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Date:

Member/EEA State<sup>3</sup>:

Competent authority:

Title of the Guidelines:

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the Guidelines on behalf of my competent authority:

Yes

The competent authority informs the EBA that it: (please select one of the following options)

**complies** with the Guidelines as of the date of this notification.

**intends to comply** with the Guidelines by \_\_\_\_\_ [insert date].

**does not comply and does not intend to comply** with **all or parts** of the Guidelines and has provided a full explanation of the extent of non-compliance together with full reasons for this, as well as other details of the partial compliance, in the Annex to this notification.

the Guidelines **do not apply** in my jurisdiction and full reasons for this have been provided in the Annex to this notification.

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<sup>3</sup> Where applicable.

Please note the following:

- This form is to be used for the compliance notification required by Article 16(3) of the EBA's Regulation. It is also to be used to provide the EBA with an update on any notification previously provided.
- If a competent authority complies with the Guidelines, please inform the EBA of any national measures published in the relevant jurisdiction to comply by providing either a summary or an electronic link.
- If the competent authority does not comply with part of the Guidelines, that competent authority should provide a full explanation in the Annex to this notification of the extent of non-compliance with those Guidelines, as well as other details of partial compliance. The explanation should specify clearly the relevant parts of the Guidelines which the competent authority does not intend to comply with.
- If a competent authority intends to comply with the Guidelines, the date should be completed by adding 'the application date of the Guidelines' except in the following two cases:
  - where the Guidelines are addressed to a competent authority but relate to a type of institution or instruments which do not currently exist in the authority's jurisdiction (such that currently there is no subject to which the Guidelines relate), that competent authority may state 'the date a relevant institution or instrument exists in my jurisdiction';
  - where legislative/regulatory proceedings have been initiated to bring into force any measures necessary to comply with the Guidelines, that competent authority may state 'such time as the necessary legislative or regulatory proceedings have been completed' and should provide a brief explanation of the proceedings.
- The EBA may decide to publish the information provided by a competent authority in this form. If the authority does not consent to the publication of any information in this form, please explain why in the Annex to this notification.

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*[insert signature]*

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*[insert date]*

## Annex

My competent authority does not, and does not intend to, comply with the Guidelines and recommendations for the following reasons:

Details of the partial compliance and reasoning:

*(please specify clearly the relevant parts of the guidelines which the competent authority does not intend to comply with, as well as other details of partial compliance)*

Any other additional information that may be necessary:

Please send this notification to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) .