



Brussels, 20.10.2021
C(2021) 7430 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 20.10.2021

amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The delegated act amends Commission Delegated Regulation (EU) No 1151/2014 specifying the information to be notified by credit institutions to their home competent authority for the exercise of the right of establishment and the freedom to provide services. Such Commission Delegated Regulation was adopted by the European Commission following the submission of draft regulatory standards by the European Banking Authority (EBA), which is mandated to develop binding technical standards under Articles 35, 36 and 39 of Directive 2013/36/EU (as subsequently amended).

Commission Delegated Regulation (EU) No 1151/2014 - together with Commission Implementing Regulation (EU) No 926/2014 with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services - has significantly improved the EU level playing field and facilitated market integration. Increased practice of such notifications has also brought to the attention areas of improvement as illustrated in the EBA Report on the peer review of the RTS on passport notifications of 10 July 2018. Accordingly, pursuant to Article 29(1)(d) of Regulation (EU) 1093/2010 establishing the EBA (as subsequently amended), the EBA has undertaken the review and amendment of the regulatory technical standards adopted under Commission Delegated Regulation 1151/2014.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft amending standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft amending technical standards submitted to the Commission. A consultation paper was published on the EBA internet site on 13 November 2019, and the consultation closed on 13 February 2020. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft amending technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft amending technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft amending technical standards submitted to the Commission. This analysis is available at <https://www.eba.europa.eu/amended-rts-and-its-passport-notification#pane-new-ed8f3c99-9589-454a-a87e-37f2578a1783> , pages 32-35 of the Final Draft amending Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act introduces amendments to Commission Delegated Regulation (EU) No 1151/2014 with a view to improving the quality and consistency of the information to be

provided by credit institutions notifying their home competent authorities of their intention to open a branch or provide services in another Member State or to cease their cross-border activity.

In particular, the most material changes concern:

- (a) the request to the credit institution to indicate in a manner as accurate as possible the intended start date of each activity for which the notification is submitted, rather than just of the core business activities as currently envisaged;
- (b) the granularity of information on the financial plan to be notified in case of establishment of a branch. Assumptions underpinning forecasts are now expressly requested to be included in the notification;
- (c) the information to be submitted in case of termination of the branch. A statement indicating the measures taken or envisaged by the credit institutions to ensure that it will no longer hold deposits or repayable funds from the public through the branch is now expressly required.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and Directive 2006/49/EC¹, and in particular Articles 35(5), 36(5) and 39(4) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 1151/2014² specifies the information to be notified by credit institutions when exercising the right of establishment and the freedom to provide services.
- (2) To foster convergence in the competent authorities' assessment practices of the notification submitted by credit institutions, the information specified in Delegated Regulation (EU) No 1151/2014 should be further detailed. Furthermore, it is necessary to update certain references to legal acts to ensure legal certainty.
- (3) The information provided by the credit institution with a branch passport notification should be sufficiently detailed to ensure that the competent authority of the home Member State is able to perform an accurate and comprehensive assessment of the credit institution's adequacy to carry out the activities for which the passport notification is submitted. For that purpose, the information provided should indicate the intended start date of each activity rather than just the intended start date of the core business activities. Similarly, the financial plan containing forecasts for the balance sheet and profit and loss account covering a three-year period should include the underlying assumptions.
- (4) To increase the efficiency in the identification of the credit institution in the communication between the competent authorities of the home and host Member State or in the communication between the host or home Member State and the credit institution concerned, the information provided by the credit institution to the

¹ OJ L 176, 27.6.2013, p. 338.

² Commission Delegated Regulation (EU) No 1151/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the information to be notified when exercising the right of establishment and the freedom to provide services (OJ L 309, 30.10.2014, p. 1).

competent authorities should indicate the credit institution's national reference code and the Legal Entity Identifier, where available.

- (5) It is important to ensure the safety of deposits and to enhance factual certainty and reliability of the financial information provided by the credit institution to the competent authorities. It is therefore necessary that credit institution, when submitting a communication about the planned termination of a branch, notifies the competent authority of the measures that have been or that are being undertaken to ensure that the branch will no longer hold deposits or other repayable funds from the public after the termination of operation of that branch.
- (6) The service passport notification should be sufficiently detailed to ensure that the competent authority of the home Member State is able to perform an accurate and comprehensive assessment of the credit institution's adequacy to carry out the activities for which the passport notification is submitted. The information provided should therefore indicate the intended start date of each activity rather than just the intended start date of the core business activities.
- (7) Delegated Regulation (EU) No 1151/2014 should therefore be amended accordingly.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (9) The 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 1151/2014

Delegated Regulation (EU) No 1151/2014 is amended as follows:

- (1) Article 3 is amended as follows:
 - (a) in paragraph 1, point (a) is replaced by the following:

‘(a) name and address of the credit institution and intended principal place of business of the branch;’;
 - (b) paragraph 2 is amended as follows:
 - (i) in point (a), points (ii) and (iii) are replaced by the following:

‘(ii) a list of the activities in Annex I to Directive 2013/36/EU that the credit institution intends to carry out in the host Member State, including the intended start date for each activity as accurate as possible, and, in case of cessation of activities, the list of the ceased activities;’

³ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (iii) a list of the activities that will constitute the core business in the host Member State;’
 - (ii) in point (b), point (iii) is amended as follows:
 - the introductory wording is replaced by the following:
 - ‘(iii) where the branch is expected to carry out one or more of the investment services and activities defined in Article 4(1), point (2), of Directive 2014/65/EU of the European Parliament and of the Council*, a description of the following arrangements:
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- * Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;
- the second indent is replaced by the following:
 - ‘— the arrangements for compliance with the obligations laid down in Articles 24 to 28 of Directive 2014/65/EU and measures adopted pursuant thereto by the relevant competent authorities of the host Member State;’;
- (iii) in point(d), point (i) is replaced by the following:
 - ‘(i) a financial plan containing forecasts for balance sheet and profit and loss account covering a period of three years, containing the underlying assumptions;’;
- (2) in Article 4(2), the following point (d) is added:
- ‘(d) where the branch takes or took deposits and other repayable funds in the exercise of its activities, a statement by the credit institution listing the measures that have been or that are being undertaken to ensure that the credit institution will no longer hold deposits or other repayable funds from the public through the branch after the termination of operation of that branch.’;
- (3) in Article 5, point (c) is replaced by the following:
- ‘(c) the intended commencement date, as accurate as possible, for each activity that the credit institution intends to carry out.’.

Article 2

Entry into force

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, 20.10.2021

For the Commission
The President
Ursula VON DER LEYEN