

**Guidelines specifying the conditions for group financial support under
Article 23 of Directive 2014/59/EU
(EBA/GL/2015/17)**

In the context of the new recovery and resolution framework for banking institutions, the credit institutions within the same consolidated group may enter into agreements to provide financial support to any other institution of the group that meets the conditions for early intervention pursuant to Article 27 of the Directive 2014/59/EU (BRRD).

These Guidelines specify the criteria to be used for the assessment some of the conditions that, according to Article 23 of BRRD, should be complied with, in order to provide financial support in the context of the referred agreements.

The group financial support agreement should be authorized by the competent supervisor and may only be concluded if, at the time of the proposed agreement, in the opinion of their respective competent supervisors, none of the parties meets the conditions for early intervention. Additionally, at the moment when specific support is provided in the framework of those agreements, the competent supervisor of the group entity providing financial support may prohibit or restrict it if it assesses that the conditions laid down by BRRD have not been met.

EBA published these guidelines on 08.12.2015. Banco de España's Executive Commission adopted them as their own on 29.01.2016

EBA/GL/2015/17

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Guidelines

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

EBA guidelines specifying the conditions for group financial support

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. 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 08.02.2016. 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 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).

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

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.