EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Guide to assessments of licence applications

Licence applications in general

Second revised edition

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1 Foreword

In this document, the terms "licence" and "authorisation" are used interchangeably, as are the terms "bank" and "credit institution".

Licensing of credit institutions is essential for the public regulation and supervision of the European financial system. Confidence in the financial system requires public awareness that banks can only be operated by entities that are licensed to do so. Licensing also contributes to the enforcement of good practice by ensuring that only robust banks can enter the market.

At the same time, licensing should not hinder competition, financial innovation or technological progress. Once licensed, credit institutions in the EU can, in principle, perform a wide range of activities. Licensing therefore promotes a level playing field throughout the EU and reduces the risk that entities will circumvent banking regulation and supervision.

Since 4 November 2014, the European Central Bank (ECB) has been exclusively competent to authorise all credit institutions established in the Member States participating in the Single Supervisory Mechanism (SSM). This competence is exercised in close cooperation with the national competent authorities (NCAs).

This Guide applies to all licence applications to become a credit institution within the meaning of the Capital Requirements Regulation (CRR)[1], including, but not limited to, initial authorisations for credit institutions, applications from fintech companies, authorisations in the context of mergers or acquisitions, bridge bank applications and licence extensions. One of the Guide's primary objectives is to promote awareness and enhance the transparency of the assessment criteria and processes for the establishment of a credit institution within the SSM.

The policies, practices and processes set out here may have to be adapted over time. This Guide does not have a legally binding nature and consists of a practical tool to support applicants and all entities involved in the process of authorisation to ensure a smooth and effective procedure and assessment. The Guide will be updated regularly to reflect new developments and experience gained in practice.

This Guide uses terminology used in the CRR, the Capital Requirements Directive (CRD IV)[2] and European Banking Authority (EBA) technical standards related to licensing.

With this second revised edition, additional guidance has been included in the Guide related to the assessment of capital (section 5.1) and the programme of operations (section 5.2) following the public consultation in September and October 2018.

1 Regulation (EU) No 575/2013 of the European Parliament and of the Council, of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1)

2 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 Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

2 Legal framework

2.1 SSM Regulation and SSM Framework Regulation

Under Article 4(1)(a) of the SSM Regulation[3], the ECB is exclusively competent for granting authorisations to take up the business of a credit institution. Article 6(4) and Article 14 provide that this competence is common for both significant institutions (SIs) directly supervised by the ECB and less significant institutions (LSIs) directly supervised by the NCAs.

The SSM Framework Regulation[4] (Articles 73 to 79) elaborates on the authorisation competence, focusing on the respective roles of the relevant NCA and the ECB in the assessment process.[5]

In performing its gatekeeper role, the ECB can use all of the powers conferred on it by the SSM Regulation. Such powers include collecting information and attaching conditions, obligations and recommendations to authorisation decisions.

Under Articles 4(1)(a) and 14(5) of the SSM Regulation, the ECB also has the competence to withdraw authorisations in the cases set out in the relevant EU or national law.

2.2 CRD IV and national law

Article 4(3) of the SSM Regulation provides that, for the purposes of carrying out its supervisory tasks, the ECB should apply all relevant EU law and, where this law is composed of directives, the national legislation transposing those directives. Authorisation requirements are covered mainly in Articles 8 and 10 to 14 of the CRD IV; these articles are minimum harmonisation provisions, meaning that national law can set additional authorisation requirements. Consequently, when taking authorisation decisions within the SSM, the ECB applies the authorisation requirements laid down in national legislation transposing the relevant CRD IV provisions, as well as any specific national legal requirements. This can give rise to differences in the treatment of licence applications across Member States.

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3 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

4 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

5 For more detail, see Section 6 – Procedural considerations.

2.3 EBA technical standards

The ECB applies all relevant EU acts adopted by the European Commission on the basis of drafts developed by the EBA, in particular the regulatory technical standards (RTS) on the information applicants need to provide to competent authorities when applying for authorisation as credit institutions, and the implementing technical standards (ITS) related to the templates for providing such information.[6] Besides a comprehensive list of information to be provided in applications for authorisation, these technical standards contain a form to be used for licence applications, as well as the relevant submission procedures and requirements.

2.4 SSM policies, practices and processes

In this document, the term "supervisors" refers to both the NCAs and the ECB.

The supervisors need to apply the regulatory requirements when assessing licence applications. To ensure that they do so consistently, the interpretation of those requirements needs to be clarified and common supervisory practices and processes need to be developed.

To that end, the ECB, together with the NCAs, has developed policies regarding authorisation applications and supervisory practices and processes, which explain in further detail how the ECB applies, on a case-by-case basis, the CRD IV, EBA standards and national law transposing the CRD IV.

These policies are adopted without prejudice to national law that the ECB should apply. When developing and applying these policies, the ECB is subject to the EBA technical standards, which prevail over them. The NCAs have agreed, to the extent possible, to interpret national law and develop procedures in line with these policies.

This Guide will be regularly reviewed in the light of the ongoing development of SSM practice for authorisations and international and European regulatory developments, or new interpretations of the CRD IV by the Court of Justice of the European Union.

6 Final report on draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU and draft Implementing Technical Standards under Article 8(3) of Directive 2013/36/EU (EBA/RTS/2017/08 and EBA/ITS/2017/05).

3 General licensing principles

3.1 Gatekeeper

From a prudential supervision perspective, licensing should prevent institutions that would not be safe and sound, or that could pose a threat to the stability of the financial system, from entering the banking market in the first place. When granting authorisations to banks, the ECB acts as a gatekeeper. Its task is to ascertain that entrants to the banking market are robust and comply with national and EU legal requirements. To this end, it focuses on applicant banks' capital levels, their programme of operations, structural organisation and the suitability of their managers and relevant shareholders.

No particular business model for banks is advocated in this Guide.

3.2 Open and complete communication

A licence application marks the start of (or a significant change in) the lifecycle of a credit institution and thus in the communication between the institution and the supervisor. The supervisors expect each applicant to accurately and completely prepare their application and openly and swiftly share information to help the supervisors reach an informed decision. The information requirements are based on the EBA's RTS and ITS on the information required for the authorisation of credit institutions.

Delays in receiving the requested authorisation most often result from the provision of incomplete information or a failure on the part of the applicant to sufficiently address additional information requests. The supervisors will communicate regularly with the applicant throughout the process.

3.3 Consistency

The first years of European banking supervision have shown divergences across Member States in the interpretation of the licensing framework and how it is applied in the assessment of licence applications.

This Guide explains in greater detail the policies, practices and processes applied by the ECB when assessing licence applications.

The Guide specifically addresses applications for a new or extended authorisation. Thus, it will not lead to re-assessment of the existing authorisations granted before. The compliance of authorised credit institutions with the requirements concerned is monitored under their ongoing supervision.

3.4 Case-by-case assessment and proportionality

For any licence application, all relevant circumstances will be taken into account. This includes considerations of proportionality in line with the nature, scale and complexity of the applicant entity's activities and the resulting risk.

Information requirements will be calibrated to the nature of the application in line with the applicable law. Applications involving novel, precedential or highly complex activities will require more information than applications solely involving straightforward or already-known activities. For example, a licence application following an internal restructuring to streamline a group structure should be treated differently to a licence application resulting from a merger between two previously independent credit institutions with different business models or to a start-up application.

4 Scope of the licensing requirement

The scope of the ECB's intervention in the licensing process has three main dimensions:

- verifying that a business is sufficiently engaging in the essential activities that it must undertake in order to be considered a credit institution as defined by the CRR;
- granting a credit institution authorisation at an entity's inception as well as amending the content of an existing licence, e.g. in terms of the scope of the permissible banking activities;
- authorising all regulated activities that are subject to a credit institution authorisation pursuant to the applicable law, irrespective of whether they derive from EU law or from national law, as long as they underpin a prudential supervisory function.

The supervisor needs to individually assess each situation and transaction that may impact on an entity's need for a credit institution authorisation to ascertain whether authorisation, rather than another form of supervisory approval, is required.

The following sections explain these dimensions in greater detail.

4.1 Essential activities

Definition of "credit institution" in the CRR

A "credit institution" is defined in the CRR as "an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account" (Article 4(1)(1)).

The ECB understands that this definition includes entities with a more traditional business model, and also those that reflect the evolving role of banks in society, especially if they explore the use of modern financial technologies (fintech), provided that both components of the definition are present: (i) taking deposits or other repayable funds and (ii) granting credits.

In particular, if the fulfilment of these two essential banking activities is not clear-cut, the ECB will examine the underlying reasons and perform a **focused analysis**. Specific consideration will be given to entities that do not perform both activities but are nonetheless subject to a mandatory licensing requirement in their Member State, such as depositaries of undertakings for collective investment in transferable funds (UCITS) and alternative investment funds.

- Formal compliance with the individual components of the credit institution definition (as might be the case if, for example, an applicant applies for authorisation as a credit institution without actually developing the corresponding activities) is generally not considered sufficient for an entity to receive a credit institution authorisation. To determine an applicant entity's eligibility, the ECB assesses whether it has **sufficiently developed both** of the defining activities (taking deposits or other repayable funds and granting credits). Possible **additional motives** for the application will be examined in more depth in cases where only formal compliance exists or is presumed to exist.[7]

- The ECB reviews whether the overall prudential framework for credit institutions is the **most correct and appropriate framework** for the intended activities. For certain specialised financial activities such as e-money issuance and payment services, a more appropriate dedicated regulatory regime exists.

- The applicant entity needs to develop both activities – the taking of deposits or other repayable funds and the granting of credits – in order to be considered a "credit institution". Nevertheless, a certain degree of flexibility can be applied during the phasing-in of activities (e.g. the first 12 months after commencing business).

  If the applicant does not intend to immediately start offering one of the defining activities when it commences its business, the competent authority should assess whether this may have an impact on the viability of the business plan.

  For example, a lack of interest revenue from the credit-granting side will affect interest payments on the deposit-taking side. The supervisors will then assess whether such a business model is sustainable, taking into account the projected phase-in period of the missing activity.

  If the business plan of the entity does not foresee granting credits for its own account on a regular basis after the start-up period, the competent authority will assess whether another regulatory regime is more suitable.

Guidance on terms used in the definition

Neither the CRR nor the CRD IV defines the individual terms which jointly constitute the definition of a credit institution. Although, in practice, the definition of some of these components (e.g. "undertaking") hardly gives rise to discussion, for others the absence of a definition has led to differing interpretations across EU Member States as to which institutions are classified as credit institutions. To ensure consistency, guidance on the ECB's interpretation of certain key terms is provided below (without prejudice to national and EU legal requirements).

7 The examination will take into account any applicable national legal requirements.

Deposits and other repayable funds

One of the main objectives of harmonised prudential supervision is the adequate protection of depositors, investors and consumers. In that respect, supervision covers institutions whose business is to receive repayable funds from the public, whether in the form of deposits or in other forms such as the continuing issuance of bonds and other comparable securities. Thus, repayable funds, including deposits, may consist of long-term savings accounts, current accounts, immediately repayable savings accounts, funds in investment accounts, or in other forms that are to be repaid. Under the broad interpretation given by the Court of Justice, "other repayable funds" refers not only to financial instruments with the intrinsic characteristic of repayability, but also to those which, although not having that characteristic, are the subject of a contractual agreement to repay the funds paid.[8]

The same broad interpretation also applies to the term "deposit", which is defined in the Deposit Guarantee Schemes Directive (DGSD)[9] as "a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay [*at par*] under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit".[10]

Funds received in relation to the provision of specific services, such as payment services or electronic money issuance, among others, are explicitly exempted from the scope of the CRD IV and/or the CRR.[11]

Public

Without prejudice to the existing definitions of "public" in national law, when used in a prudential context "public" implies an element of protection for natural or legal persons against entrusting funds to unsupervised entities whose financial soundness is not established. Specific groups that are deemed not to need such protection may hence be exempted from the term "public". For example, people who have a (personal) relationship with the company to whom they entrust their money and are thus able to assess its financial soundness, or professional market participants with sufficient expertise and funds to conduct their own counterparty research.

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8 Judgment of the Court of Justice of 11 February 1999, *Romanelli*, C-366/97, ECLI:EU:C:1999:71, paragraph 17.

9 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

10 Article 2(1)(3) DGSD.

11 Article 18(3) of the Second Payment Services Directive (PSD2) (Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35)) and Article 6(3) of the Electronic Money Directive (EMD) (Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7)).

Grant credit for own account

Lending, in the form of granting credits or loans, must be carried out by the credit institution “for its own account”. The credit institution is therefore the creditor, while the credits/loans that it grants become its assets. The different types of credit include, but are not limited to, those covered by the second activity listed in Annex I to the CRD IV, i.e. consumer credits, mortgage loans, factoring and financing of commercial transactions. Overdraft facilities can also qualify as credits under the CRR definition.

4.2 Circumstances triggering a licence requirement

Initial licensing

Entities may need to file an initial licence application with the NCA for various reasons. Whether the licence is required on a temporary or permanent basis has, in principle, no bearing on the application. Licences are, however, generally granted for an indefinite period of time.

- Any **person (or group of persons) wishing to become a credit institution**, i.e. to begin taking deposits or other repayable funds and granting credits, requires a new licence. It may be a newly created entity or an existing one that has already been performing one of the two required activities and now wishes to offer the other activity as well. It may also be a regulated financial institution that plans to expand its business to include full banking services.

- A new licence may also be necessary if **two or more credit institutions merge and create a new entity to accommodate the merged credit institution activities.** Any new entity performing regulated activities requires a licence.

  Such a new entity may sometimes only need to exist for a short period of time, for example in the course of a merger, when a credit institution’s activities may need to be carved out and placed into a new, temporary entity before being merged into the final entity. Regardless of its temporary nature, this new entity would still require a licence.

  Nevertheless, an exception can be made for temporary credit institutions that will hold the activities only for a “legal second”, i.e. only for as long as it takes to complete the legal transactions involved in the merger. In order to decide whether to make an exception, the supervisors will take into account the specific circumstances and risks involved in the execution of the transaction. The ECB considers that such an exception can only be made where the parties concerned have a safeguard in place in case the transfer cannot be completed within the “legal second”. All other necessary supervisory approvals pertaining to the merger will still need to be obtained.

- A **bridge bank** is a temporary credit institution created specifically to hold the assets and liabilities of another, typically insolvent, credit institution in order to maintain critical functions while the sale or write-down of assets is being arranged. Although temporary, bridge banks are credit institutions and are therefore subject to an ECB licence decision.

  Bridge banks often need to be established quickly, to support a bank in crisis. Owing to the urgency of the situation and short timelines, in duly justified circumstances bridge banks can be authorised with a waiver, as provided for in the Bank Recovery and Resolution Directive (BRRD)[12], allowing them to begin operations without fully complying with CRD IV requirements. This type of waiver should, however, be limited in time.

  Depending on the particular situation, the licensing of bridge banks is undertaken in cooperation with other authorities, notably the Single Resolution Board or the national resolution authority. Other authorities may also be involved as necessary.

Changes in licences

Entities may need to file applications to change initial licences for various reasons, including, but not limited to, those described below.

- Certain Member States do not grant “universal” banking licences, i.e. licences authorising the applicant to perform all of the activities listed in Annex I to the CRD IV, or more if so defined by national law. In the case of a non-universal licence, the scope of the initial authorisation may therefore need to be extended if an authorised entity wishes to take up another regulated activity, such as investment services, portfolio management, safekeeping and custodian services, etc.

Annex I to the CRD IV

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

4. Payment services as defined in Article 4(3) of Directive 2007/64/EC.

[12] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

   (a) money market instruments (cheques, bills, certificates of deposit, etc.);

   (b) foreign exchange;

   (c) financial futures and options;

   (d) exchange and interest-rate instruments;

   (e) transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.

- An institution may choose to carry out different activities over the course of its lifetime. If national law requires a licence decision due to a **change in activity**, then the ECB must be involved and will take the licence decision. If, however, the initial licence already covers the new activity, there should be no need to apply for a change in licence.

- The legal form of an entity may also change. If the **change in legal form** requires a licence decision according to national law, or if it modifies the prudential regime that is applied to the institution, then the ECB should be involved and will take the licence decision. If the change of legal form does not

require a licence decision according to national law, other types of supervisory approvals may still be necessary, for example for changing the credit institution's constituent documents (articles of association).

- **Mergers** may trigger the need for an ECB decision on a licence extension, particularly if the entities' licences do not cover the same activities. The entity that will take on the regulated activities previously carried out by the other parties to the merger needs to have authorisation for the entire range of activities. If the entity already has a banking licence, that licence may need to be extended. All other necessary supervisory approvals pertaining to the merger must also be obtained.

Given the exclusive competence of the ECB to grant authorisations within the SSM, licences should not be transferred to either a new or an existing entity without prior authorisation from the ECB.

In general, applications for changes in licences can be assessed in a more proportionate way than initial licence applications. Examples of this are included in Section 5.

4.3 Additional activities regulated by national law

See also the following clarification on the ECB's banking supervision website:

Letter of 31 March 2017 regarding the ECB's competence to exercise supervisory powers granted under national law.

The activities regulated by national law may go beyond those listed in Annex I to the CRD IV. Therefore, whenever national law requires a credit institution to obtain an authorisation before beginning a financial activity, the ECB may be required to take an authorisation decision, even if the activity is not one of the activities listed in Annex I to the CRD IV insofar as this authorisation requirement underpins a supervisory function under EU law.[13] [14]

The ECB grants authorisations for activities that are only regulated by national law insofar as they underpin a supervisory function under EU law.

[13] With the exception for the time being of the authorisation of covered bond activities carried out by credit institutions where such dedicated authorisation is required by national law pending further assessment.

[14] Under Article 78(5) of the SSM Framework Regulation, according to which "the decision granting authorisation shall cover the applicant's activities as a credit institution as provided for in the relevant national law (…)".

5 Assessment of licence applications

For more information see:

- EBA technical standards
- Programme of operations: Article 10 of the CRD IV
- Own funds: Article 12 of the CRD IV
- Suitability of management: Article 91 of the CRD IV
- Suitability of shareholders: Article 14 of the CRD IV

The supervisors assess the information submitted by the applicant for an initial banking licence or a change to an existing licence against a set of criteria stemming from EU and national law and in a manner appropriate to the licence requested. The following are examples of some of the areas covered by the assessment:

- general presentation of the applicant and its history, including background and justification for requesting the licence;
- programme of operations, including intended activities, business model and the associated risk profile;
- structural organisation of the applicant, including IT organisation and outsourcing requirements;
- financial information, including forecast balance sheet and profit and loss account projections and adequacy of internal capital and liquidity;
- suitability of shareholders;
- suitability of the management board and key function holders and of the supervisory board.

The following sections explain the assessment criteria in greater detail.

5.1 Capital[15]

As part of the assessment of licence applications, supervisors evaluate the amount, quality, origin and composition of the applicant credit institution's[16] capital. The supervisors assess capital needs for all applications, regardless of whether they concern an initial authorisation, an authorisation in the context of a merger, an acquisition, a bridge bank application or an extension of the scope of an existing authorisation. The assessment of capital needs takes into account the situation at the time the authorisation is considered, as well as the projected capital needs over a specified period.

Differences have been observed between NCA practices for determining the level of capital needed. Therefore, it is worth clarifying two underlying concepts:

[15] Section 5.1 has been added to this second revised edition of the Licensing Guide.

[16] Depending on the particular circumstances of each case, the applicant is not always the entity to be authorised as a credit institution; it may, for example, be the proposed shareholder(s) of a legal entity to be established once the authorisation has been obtained.

Initial capital requirement

The initial capital requirement refers to the absolute minimum amount of capital that a credit institution is required to have under national law. Initial capital must be paid up in full at the time the authorisation is granted[17] and must subsequently be maintained over the credit institution's lifetime, in accordance with Article 93 of the CRR. The CRD IV sets the minimum amount of initial capital at €5 million[18]. In transposing the CRD IV into their national laws, some Member States have established a higher threshold for the initial capital. In such cases, this higher threshold is used to determine the initial capital.

Own funds requirement

The own funds requirement refers to the amount of capital that a credit institution must maintain after authorisation, in order to absorb possible losses and mitigate the risks inherent in its activities. The own funds requirement is estimated at the time of authorisation, based on the applicant's business plan and its projected credit, operational and market risk-weighted assets. It applies both to stand-alone entities and to groups subject to consolidated supervision.

Quality of capital

Pursuant to Article 72 in conjunction with Article 25 of the CRR, the own funds of an institution consist of the sum of its Common Equity Tier 1 capital (Articles 26 to 50 of the CRR), Additional Tier 1 capital (Articles 51 to 61 of the CRR) and Tier 2 capital (Articles 62 to 71 of the CRR)

To ensure consistency when assessing the strength of a credit institution's capital base, the rules on what can be included in its constituent elements have been harmonised. The CRR defines which capital instruments and items can be recognised as elements of own funds.

During the assessment the supervisors verify that the capital is composed of recognised elements, thus ensuring the quality of the capital.

The credit institution's capital is expected to be clearly segregated from other owner assets, as it must remain fully available and for the unrestricted sole use of the credit institution.

Quantity of expected capital at authorisation

The supervisors evaluate the credit institution's capacity to maintain a sufficient level of capital over a specified time period, typically three years. To this end, they assess

[17] Except where national law explicitly prevents the minimum initial capital from being paid up in advance, in which case a condition precedent can be added to the ECB's decision whereby the authorisation becomes effective only after the initial capital has been paid up in full.

[18] There are some specific exceptions to this provision. For details, see Article 12(4) of the CRD IV. For certain categories of credit institution, the minimum initial capital requirement may also be lower than €5 million.

the applicant credit institution's business plan and evaluate the activities that will be undertaken and the related risks.

The ECB expects the credit institution's capital at authorisation to be sufficient to absorb losses resulting from its risk exposure over this time period.

The business plan is expected to contain a central scenario and a severe, but plausible, adverse scenario for the first three years of operation. As part of the overall assessment of the business plan, the supervisors review and challenge the projections under its central and adverse scenarios.

As standard practice, in order to determine the level of expected capital at authorisation, several calculations are performed and their results are compared:

- First, the applicant estimates the own funds requirement for each of its first three years of activity and the highest of these three amounts is identified.
- Second, this amount is compared with the initial capital requirement under national law to determine which of the two is highest.
- Third, the projected cumulative losses (if any) in the first three years of activity under the credit institution's central or adverse scenario (whichever are higher) are added to the highest amount identified in the second step. These three steps form the basis for the calculation of the total amount of capital that a credit institution is expected to have available at authorisation (i.e. the "expected capital at authorisation").

The calculation of the expected capital at authorisation is based on the applicant's business plan and its underlying assumptions over the first three years of activity. The aim is to establish a level of capital that seeks to ensure the compliance of the credit institution with the estimated capital requirements during its first few years of activity.

For this purpose, it is common practice for the competent authorities, including the ECB, to apply an additional individual risk-based buffer to the initial capital requirement. This is because the initial capital requirement must be maintained over the credit institution's lifetime, and cannot be used to absorb any potential losses.

Therefore, the expected capital at authorisation is defined not only as the level of capital that guarantees compliance at that specific point in time, but also as the level of capital that guarantees compliance with both the own funds requirement and the initial capital requirement during the first few years of activity.

Availability of capital

A distinction is made between the part of the expected capital at authorisation to be paid up in full at the time of authorisation and the remainder, which can be covered by capital resources.

The highest amount of either the initial capital requirement or the own funds requirement, plus the losses in the first year of activity, as projected by the applicant, form the basis for the calculation of the amount that it is expected to be paid up in full at the time of authorisation.

The ECB expects the difference between the amount to be paid up in full at the time of authorisation and the expected capital at authorisation to be covered by capital resources available at the time of authorisation.

Capital resources are defined as assets that are reliably available to the applicant. Upon verification by the supervisors, the following may be included as capital resources: borrowed funds, letters of guarantee, shareholders' private financial resources, and financial instruments issued or to be issued on financial markets, etc. The applicant is expected to demonstrate the availability of these additional resources.

Examples

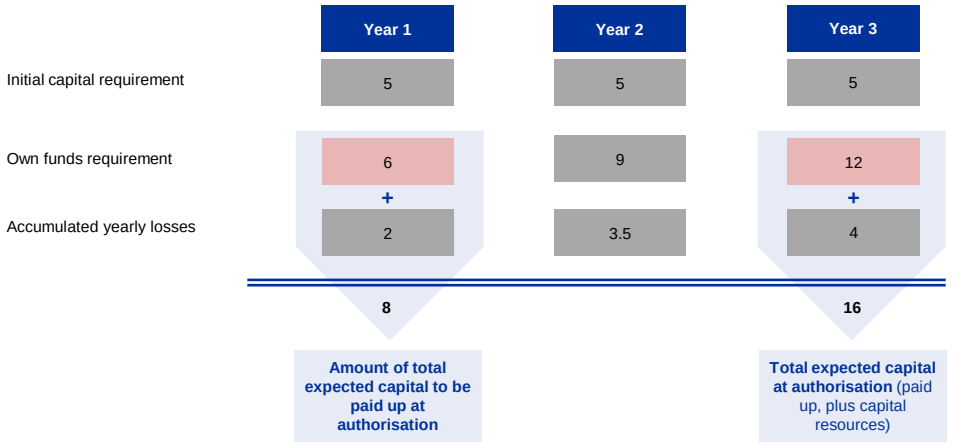
The examples below illustrate the variations in the total capital expected at authorisation that can occur due to certain Member States having established a higher threshold for the initial capital requirement, and the distinction between paid up capital and the total expected capital.

Example 1: The own funds requirement surpasses the initial capital requirement

In this example, the own funds requirement is estimated to be consistently higher over the first three years than the initial capital requirement. The highest amount reached by the own funds requirement – 12, in the third year – is added to the projected cumulative losses of the first three years – i.e. 4 – for a total of 16, which is the amount of capital expected at the time of authorisation of the credit institution (including capital resources). The amount of capital expected to be paid up at authorisation in this example is 8 (made up of the estimated own funds requirement in the first year – 6 – plus the projected losses in the first year – 2).

Figure 1

The own funds requirement surpasses the initial capital requirement

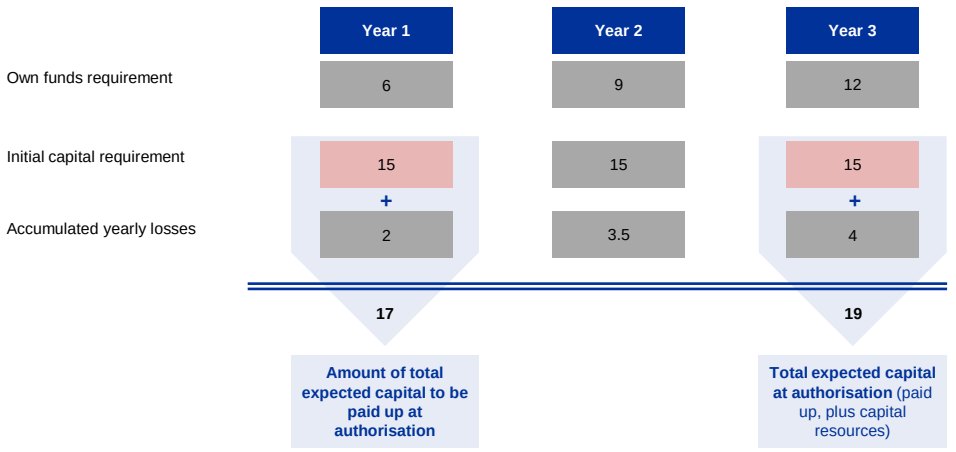


Example 2: The initial capital requirement under national law surpasses the own funds requirement

In this example, the initial capital requirement – 15 – is consistently higher over the first three years than the own funds requirement. Since 15 is the highest amount, the amount stemming from the initial capital requirement is used for the calculation, rather than the amount stemming from the own funds requirement. Therefore, 15 is added to the cumulative losses of the first three years – 4 – for a total of 19. In this example, 19 is the amount of expected capital at the time of authorisation of the applicant (including capital resources), while 17 (initial capital of 15, plus the projected losses in the first year – 2) is expected to be paid up at authorisation.

Figure 2

The initial capital requirement under national law surpasses the own funds requirement

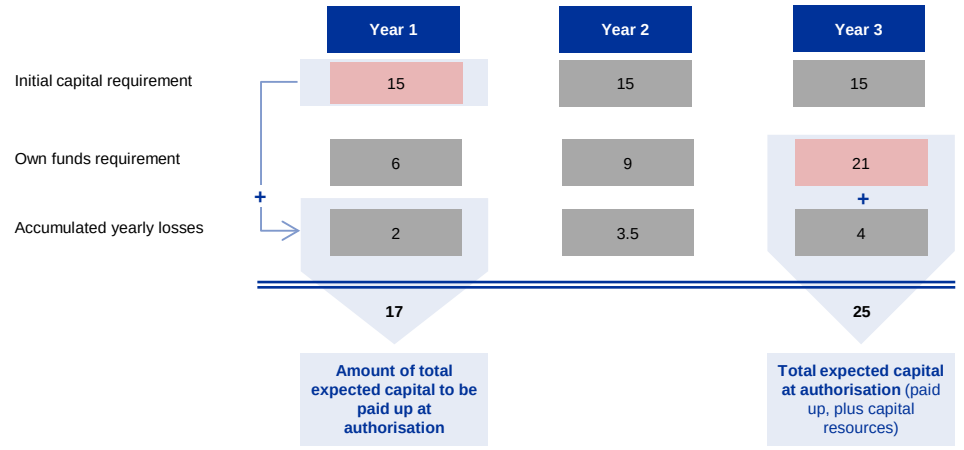


Example 3: there is a switch in the highest amount used

In this example, the projected own funds requirement grows rapidly and surpasses the initial capital requirement in year three. This highest amount – 21 – is added to the projected cumulative losses of the first three years – 4 – for a total of 25, which is the amount of capital expected at the time of authorisation of the applicant (including capital resources). The expected amount of capital paid up at authorisation – 17 – is the same as in the previous example.

Figure 3

There is a switch in the highest amount used



Note that the highest amount to be used as a basis for the calculations can also occur in year one or two, unlike in the examples above.

Moreover, additional capital can be requested by the supervisors at the time of authorisation if specific risks need to be covered, e.g. “start-up risk” or “execution risk”, depending on the individual circumstances based on a case-by-case analysis.

Location

The required capital paid up in full is expected to be present on the books of the credit institution, unless national law provides otherwise.

Timing

It is advisable for the full amount of the expected capital to be paid up in full prior to the granting of authorisation. However, if, owing to national laws or practices, this is

not feasible, the initial capital should be fully paid up prior to authorisation, or at least before the commercial launch of activities[19].

Evidence of the payment or transfer of the capital is expected to be submitted to the supervisors, if required under national law.

Banking groups

In some cases, newly authorised banks are part of an existing banking group. The newly authorised subsidiary may have an impact on the capital levels of the group, depending on its size and activities. When assessing the potential impact of a newly authorised entity on a banking group, the existence of waivers will be taken into account.

Waivers can be granted by the competent authorities and permit the newly authorised entity to be exempt from capital and/or liquidity requirements on a stand-alone basis. Instead, the newly authorised bank's requirements will be integrated into the prudential consolidation scope of its parent company.

If it is intended that the credit institution is to be exempt from capital and/or liquidity requirements on a stand-alone basis, the waiver decisions need to be adopted prior to authorisation, or at the same time as authorisation is granted, in order for the waiver to apply with effect from the time of authorisation.

Typically, waivers are granted at the time of authorisation in cases where the applicant and/or its parent are already supervised institutions.

Bridge banks

As a general rule, newly licensed bridge banks also have to comply with capital and liquidity requirements.

Owing to the inherent uncertainties for bridge banks regarding valuation and costs, the supervisors, following a case-by-case assessment, may set the post-resolution capital requirement higher, or lower, than for the predecessor entity.

In general, the bridge bank should conserve the same percentage of capital as it had under its former incarnation, taking into account a prudent valuation of the assets, rights and liabilities transferred to it, until a full assessment under the Supervisory Review and Evaluation Process (SREP) can be carried out.

[19] The commercial launch of activities is understood as being the point in time when the credit institution begins to market its offer with a view to attracting customers.

5.2 Programme of operations[20]

After the adoption of the draft RTS by the EBA, the information to be provided as part of the licence application will become more specific and will include comprehensive documents and details covering a wide range of topics.

While the following list is not exhaustive, it indicates the main topics of interest to supervisors in the assessment of the programme of operations and business plan.[21]

The supervisors can challenge the information submitted in order to test the assumptions that form the basis of the business plan.

The business plan is generally formulated over the medium term, i.e. over a three to five-year horizon.

Proposed activities and strategy

In order for the competent authorities to assess the business model and associated risk profile, the applicant is requested to submit information regarding the proposed activities to be carried out, in accordance with Article 10 of the CRD IV and national implementing legislation. The applicant is expected to describe the overall strategy as well as the identified steps to attain the strategic goals of the credit institution.

The supervisors assess the information contained in the business plan regarding the products and services to be offered, the segment and location of targeted customers, the physical and/or digital distribution channels and the intended market positioning vis-à-vis competitors.

When reviewing the schedule for the implementation of the proposed business plan, the supervisors will take into account the content, priorities and deadlines of the various planned steps, as well as the fixed and variable costs stemming from the implementation.

The application is expected to also include information about the planned adhesion to a deposit guarantee scheme and institutional protection scheme, as applicable.

Economic environment and business model viability

The supervisors assess the situation of the credit institution within the macroeconomic context while also taking into consideration the business environment.

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[20] Section 5.2 has been added to this second revised edition of the Licensing Guide.

[21] When appropriate, and where allowed by national law, the supervisors may request the submission of further documentation, for example: an exit plan describing an orderly winding-down of credit institution activities without default.

The environment provides context for the supervisors to understand the key assumptions on which the projections are built. The supervisors will often challenge the underlying assumptions, in order to ensure that they are realistic and that the projections are achievable.

The viability of the business model is assessed by looking at key profit drivers and the ability of the entity to generate adequate returns over the first three years of activity. In addition, the supervisors assess the sustainability of the credit institution's business model by looking at its capacity to generate future profits and its expected risk profile over the business plan horizon.

Financial projections

The assessment of the financial projections is based on the forecast balance sheet and profit and loss account statements covering at least three full years of activity provided by the applicant.

The projections are expected to contain a central, or base-case, scenario, as well as an adverse scenario, in order for the supervisors to assess the viability and sustainability of the business model under different conditions. Both scenarios should explain the assumptions behind them, why they were chosen, and why they are considered realistic.

Both scenarios are expected to show the impact on capital and liquidity ratios.

The financial information provided is expected to also describe the applicant's funding profile, its diversification and any applicable sources of financing and/or any indebtedness incurred.

The financial projections form the basis of the assessment of whether the amount and quality of capital provided by the applicant is sufficient to absorb losses stemming from the credit institution's risk profile, including the projected losses under the adverse scenario.

Organisational structure

When assessing the clarity and effectiveness of the organisational structure of the credit institution, the supervisors look at the organisation not only of the operational staff, but also of the management layers.

The assessment evaluates whether the overall organisation allows the credit institution to perform its activities in an effective, responsible and controlled manner.

The supervisors pay attention to the allocation of tasks and the reporting lines, as well as the organisation and the qualitative and quantitative composition of the risk management and control functions.

Governance arrangements

The governance arrangements of an institution are part of the corporate structure, and contribute to whether it can be considered “fit for purpose”.

The assessment of the governance arrangements looks at the composition and role of the management and supervisory bodies, including the relevant committees. This includes an evaluation of their compliance with national law.

The governance structure is assessed against the criteria of transparency, robustness and its ability to ensure effective decision-making with clear allocation of powers and responsibilities at all levels.

Furthermore, according to the relevant Union and national law, the governance arrangements must ensure adequate checks and balances, protect the management body against undue influences and enable conflicts of interest to be identified.

Internal control and risk management framework

According to the relevant Union and national law, the internal control and risk management framework must comprehensively cover the credit institution’s activities and incurred risks. In order to assess this framework, the supervisors look at whether the applied policies and methodologies enable risk to be effectively identified, measured and monitored, including for outsourced activities.

As a general principle, the risk management, compliance and internal audit functions should be adequately staffed, both in terms of numbers and of competence. Therefore, the assessment will take into account the size of the functions compared with the scale and complexity of the credit institution, the geographical location of the functions compared with the location where the activities are actually performed by the credit institution, and whether the internal control and risk management framework has sufficient technological means at its disposal.

IT infrastructure, including business continuity planning

Credit institutions rely heavily on information technology to support business operations, particularly when providing online and/or mobile banking services. Therefore, it is important that the IT infrastructure is robust and that relevant steps have been taken to plan for business continuity.

The supervisors evaluate the capacity of the IT infrastructure to meet its current and future business requirements, under normal circumstances and in periods of stress.

The credit institution is expected to have in place appropriate policies and processes for identifying, assessing, monitoring and managing its IT risk.

The business continuity plan, including IT disaster recovery, is evaluated to gauge its capacity to provide adequate resilience and maintenance of critical operations in the event of severe disruptions.

Outsourcing arrangements

Activities that are outsourced are considered riskier, whether they are outsourced within the credit institution's group, or to third-party providers. These activities therefore come under particular scrutiny and the assessment takes into account, inter alia:

- the nature of and rationale for outsourced activities;
- the experience, track-record and location of the service providers;
- the soundness of the outsourcing policy and its impact on risk management, in particular for cross-border arrangements; and
- the contractual arrangements in the form of service level agreements.

5.3 Fit and proper assessments of the management body

Members of the management body of the applicant entity must be assessed for compliance with the requirements for fitness and propriety ("suitability"). This applies to all members of the management body, either in its executive function or in its supervisory function. In principle, the authorisation decision itself will include the assessment of the fitness and propriety of all the members of the management body.

Unlike fit and proper assessments as part of ongoing supervision, fit and proper assessments of prospective members of the management body as part of the licensing process will be conducted by the ECB, for both significant and less significant institutions.

However, once the initial licence decision has been taken, subsequent appointments or changes to the management body will neither affect the initial licence decision nor require a new one.

For more detailed guidance, see the ECB's Guide to fit and proper assessments.

The criteria used in assessing appointments to the management body as part of a licensing procedure are the same as those used in regular fit and proper assessments.

As the assessment process is subject to the principle of proportionality, it is tailored to the anticipated systemic importance and forecast risk profile of the applicant entity. The following points illustrate how the proportionality principle is applied.

- By definition, credit institutions applying for licence extensions are already licensed and supervised by either the ECB or the NCA, depending on their

significance. Therefore, only new management body members who will be appointed as a result of the extension will be assessed.

If the extension represents a significant change in the entity's business model or in the complexity or range of its services and products, the board as a whole can be assessed as part of the licence extension to ensure that the collective suitability of the board's knowledge is preserved.

Existing members of the management body are generally not reassessed as part of the licence extension procedure. However, if at some point during the assessment, new facts emerge that may adversely affect the fitness and propriety of board members, the NCA together with the ECB may consider performing a separate full fit and proper assessment.

- Appointments in bridge banks are subject to the regular fit and proper process. A waiver regarding the fitness and propriety requirements may only be granted if the establishment of a bridge bank is exceptionally urgent.
- The assessment of the reputation of the appointees/candidates will be conducted in the same manner for all applicants, regardless of the applicant entity's future status as significant or less significant; proportionality does not apply.

5.4 Assessment of direct and indirect shareholders

The term "shareholders" is used here to cover "shareholders and members" as referred to in in Article 14 of the CRD IV.

If the shareholders of the applicant entity hold more than 10% of the capital or voting rights or exercise a significant influence over the management of the entity, the qualifying holding criteria will be applied as part of the licensing procedure. However, if there are multiple smaller shareholders without any qualifying holdings, the 20 largest shareholders will normally be assessed.[22]

Existing shareholders are generally not reassessed as part of a licence extension procedure. However, if at some point during the assessment, new facts emerge that may adversely affect the suitability of qualified shareholders, the NCA together with the ECB may consider performing a separate shareholder assessment, provided this power is granted under national law.

Qualifying holdings

Within the context of a licensing procedure, the criteria used for assessing shareholders are the same as those used for assessing an acquirer of a qualifying holding in an existing credit institution. These criteria are:

[22] Final report on draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU and draft Implementing Technical Standards under Article 8(3) of Directive 2013/36/EU (EBA/RTS/2017/08 and EBA/ITS/2017/05).

- the reputation of the shareholder;
- the financial soundness of the shareholder;
- the lack of suspicion of money laundering or terrorist financing.

In addition, two other criteria also used in the assessment of acquisitions of qualifying holdings are covered elsewhere in the overall licensing assessment, specifically:

- the reputation, knowledge, skills and experience of the senior management who will direct the business of the credit institution (see Section 5.3);
- the projected compliance of the institution with the prudential requirements (see Section 5.1).

While the assessment closely mirrors that conducted during a qualifying holding procedure, no separate qualifying holding decision will be issued, unless national law transposing the CRD IV provides otherwise. The result of the assessment of the shareholders is, therefore, in principle, incorporated into the licence decision.

Focused assessment of 20 largest shareholders

For more information, see the EBA regulatory technical standards (currently awaiting implementation).

In the absence of persons with qualifying holdings, the assessment will instead generally focus on the 20 largest shareholders or, if the entity has less than 20 shareholders, all of the shareholders.

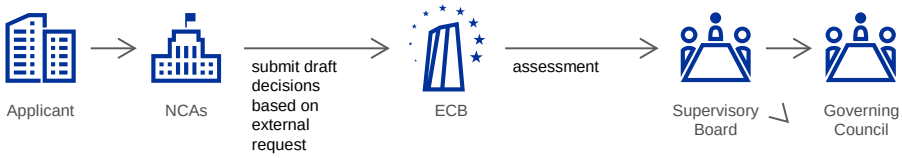
The information requirement for the 20 shareholders taking part in the focused assessment will take into account not only the EBA standards, but also the proportionality principle, the size of the holdings and the role of the shareholders.

Several shareholders may hold exactly the same amount, making it difficult to know who to include in the focused assessment of the 20 largest shareholders. In that case, all of the shareholders with a holding of exactly the same amount as the smallest holding before the cut-off will, in principle, be included in the assessment.

6 Procedural considerations

In the euro area, the procedure for granting or extending a banking licence is one of what are known as “common procedures”. The ECB and the national supervisors are involved in different stages of these common procedures in which the entry point for all applications is the national supervisor of the country where the bank is/will be located, irrespective of whether the significance criteria are met or not. The national supervisors and the ECB cooperate closely throughout the whole procedure, which, for all supervised credit institutions, ends with the ECB taking the decision.

Figure 4
The authorisation process



6.1 Applicable timelines

Article 15 of the CRD IV provides guidance as to the maximum time a licence application can take (12 months). However, as not all Member States have transposed the Directive in their national laws in the same way, the current national laws continue to set out differing timelines. The start of the countdown period, or timeline, for a licence application can therefore differ across Member States. In some Member States, the timeline starts when the NCA receives the application, even if it is incomplete.[23] In others, the timeline is not initiated until the application is considered complete.[24] Likewise, the use of suspension periods in the timeline can differ across Member States.

There are three main phases for each licence application:

- pre-application phase;
- application phase;
- handover to ongoing supervision.

Within these constraints the following harmonised three-phase approach is, to the extent possible, applied.

Pre-application phase

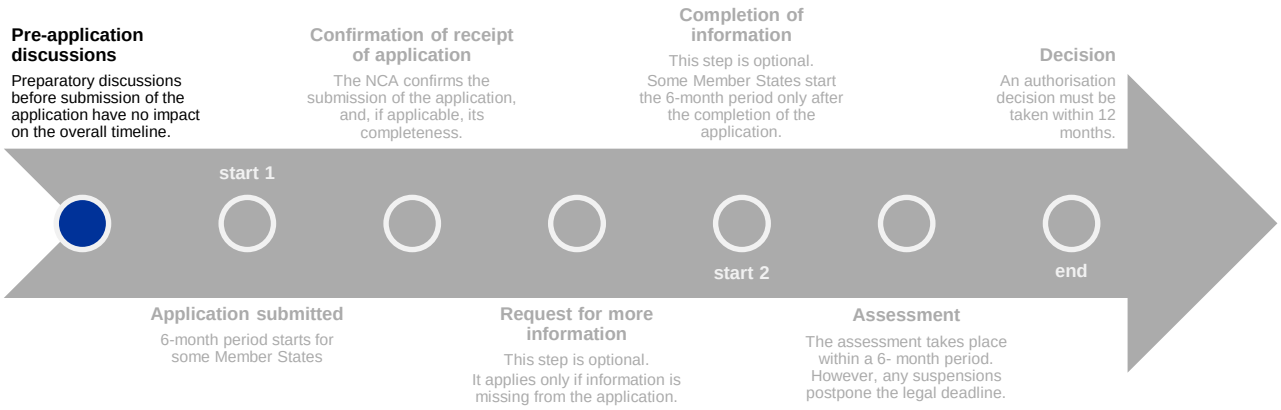
The supervisors generally engage in discussions with the applicant prior to the formal submission of a licence application in order to (i) explain the process and the information requirements, (ii) identify, inter alia, whether a credit institution licence is the appropriate authorisation for the entity, (iii) review the effective presentation of

[23] “start 1” in Figures 5 and 6.

[24] “start 2” in Figures 5 and 6.

the licensing plans, and (iv) raise potential early concerns from a prudential perspective. This practice is greatly encouraged to ensure a smoother process.

Figure 5
Timeline, pre-application phase



From the supervisors' side, specialists familiar with the licensing process and the assessment criteria will be involved. It is important that the right persons from the entity's side take part in the pre-application discussions, i.e. senior staff with the capacity to take decisions as well as persons with sufficient operational knowledge to respond to detailed questions.

Any feedback provided by the supervisors in this phase is without prejudice to the outcome of the application phase and the subsequent decision by the ECB.

The pre-application phase enables the applicant to evaluate the scope and timeline of the project. The applicant can then decide whether to delay or interrupt the process or to move on to the next phase and submit a formal application to the NCA.

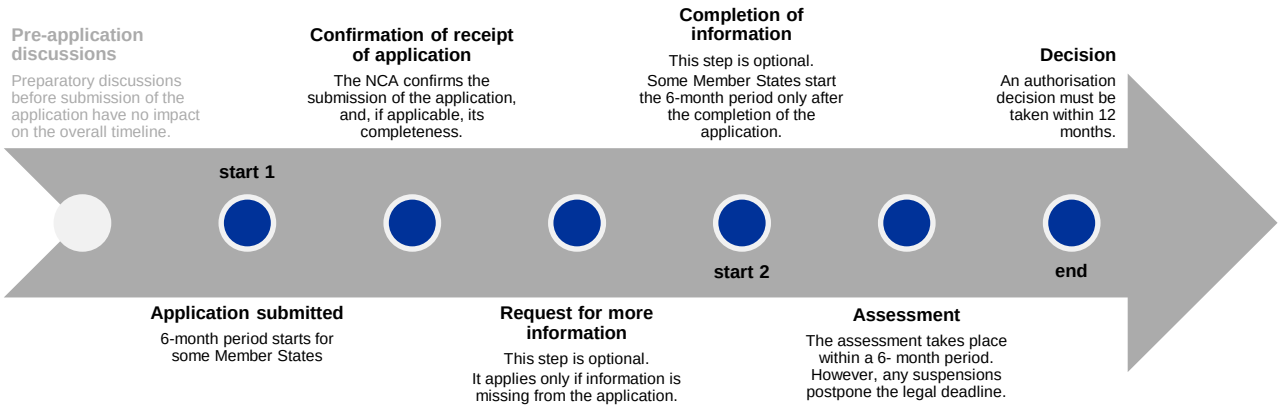
Application phase

The entry point is always the NCA, as national laws must be taken into account.

The supervisors generally hold regular meetings with the applicant to guide the applicant through the assessment process and to discuss the submitted information in depth.

Figure 6

Timeline, application phase



At any time during the assessment process, the NCA and the ECB can request further information from the applicant as necessary. It often emerges during the application procedure that further details are needed to understand and analyse the application.

Depending on applicable national law, these requests for further information can suspend the proceedings and postpone the legal deadline accordingly. However, the entire process, starting from the NCA's acknowledgement of receipt of the application should not exceed 12 months, including any suspension periods.

The applicant can withdraw the application at any time, informing the NCA accordingly. This may happen, for instance, if the applicant considers that the requirements for licensing cannot be fulfilled. Otherwise, the application ends either with a decision by the NCA to reject the application or, if the NCA has submitted a draft proposal to the ECB to grant the authorisation (in which case it will have notified the applicant accordingly), with a decision by the ECB to grant or reject the application.

Example timeline for a typical licence application

- Group A decides to create a new subsidiary, "Bank X".
- Group A approaches the NCA of the Member State in which Bank X is to be established and has several preparatory meetings with the NCA, and possibly the ECB, at which the process is explained and the information to be submitted with the application is specified.

- Group A formally submits to the NCA its application for a credit institution authorisation for Bank X.
- The countdown period begins with the initial submission of the application (as provided for by the national law of the Member State in which Bank X is to be established).
- The NCA sends a confirmation to Group A, acknowledging the receipt of its application and the official start of the assessment period and giving the applicable legal deadline.
- During the assessment phase, the NCA together with the ECB discovers that some vital pieces of information are missing from the application file. The NCA then makes a formal request to the applicant to submit the missing information.
- If provided by national law, the request for further information suspends the process, and the timeline is paused.
- Once Group A has submitted the missing information, the process is resumed, and the legal deadline is extended by the number of days of the suspension period, if so provided for by national law.
- The supervisors request further information (and therefore suspend the process in accordance with national law) several times over the course of the assessment.
- After the assessment has been performed by the NCA and the ECB, the NCA proposes to the ECB to grant the authorisation for Bank X and the ECB makes its decision within the applicable legal deadline, taking into account any suspension periods.

Handover to ongoing supervision

Depending on the circumstances that triggered the licensing requirement and the information that was submitted during the pre-application or application phases, there will be a greater or lesser need for enhanced follow-up monitoring in order to ensure that the credit institution complies with the ECB licence decision, including any ancillary provisions (see next section).

For more information, see the SSM Supervisory Manual

The supervisors will begin planning and carrying out supervisory activities, including an assessment of significance and the setting up of a new Supervisory Examination Programme (setting up a Joint Supervisory Team (JST) in the case of a significant bank and conducting a Supervisory Review and Evaluation Process (SREP), stress tests, on-site inspections, thematic reviews, etc.).

More generally, the supervisors will monitor the authorised entity's adherence to the submitted programme of operations. If it emerges that the new entity does not

comply with the requirements set out in the authorisation decision or with the ongoing prudential requirements, the supervisors can take action, ranging from closer interaction through specific meetings and the use of supervisory powers to enforcement measures or even sanctions, depending on the extent of non-compliance.

6.2 Ancillary provisions in the decision

The Court of Justice has ruled that, in principle, a competent authority can impose conditions and/or obligations in cases where the licence application would otherwise be rejected.[25] This section clarifies the circumstances under which such supervisory tools may be used.

Several types of ancillary provisions can be attached to a licence decision:

- a “condition” refers to a prerequisite, which must be fulfilled before the licence decision becomes effective;
- an “obligation” refers to a requirement or restriction which applies on an ongoing basis or for a set period after the licence decision is taken;
- a “recommendation” refers to a non-binding suggestion;

Similarly, the applicants may make “ex ante commitments” prior to the adoption of the authorisation decision. These are considered by the NCAs and the ECB in the overall assessment and can be included in the authorisation decision as agreed conditions or obligations.

Conditions

Conditions require the applicant to undertake an action or to refrain from an action. The authorisation will only become effective once the condition has been fulfilled.

Conditions are proportionate and do not go beyond what is necessary to ensure that the criteria in the licensing assessment are met.

Conditions are clear and well-defined, to ensure legal certainty. A condition must be implementable and enforceable.

Obligations

Like conditions, obligations require the applicant to undertake an action or to refrain from an action. Obligations are issued to deal with matters occurring after the

[25] Judgment of the Court of Justice of 25 June 2015, *CO Sociedad de Gestión y Participación SA and Others* v *De Nederlandsche Bank NV and Others*, C-18/14, ECLI:EU:C:2015:419.

authorisation has become effective on an ongoing basis. The non-fulfilment of an obligation will not put in question the initial licence decision. However, non-compliance with an obligation may result in the application of enforcement measures and/or sanctions.

Obligations are proportionate and do not go beyond what is necessary to ensure that the criteria in the licensing assessment are met. They could be imposed in order to address potential issues after authorisation, in particular where there are concerns in relation to the fulfilment of the licensing assessment criteria on an ongoing basis.

Recommendations

Recommendations can be attached to a licence decision, even if all authorisation criteria have technically been met. Recommendations can cover a broad range of issues that should be addressed.

Recommendations are not legally binding. The reasons for issuing them and the objectives they are intended to achieve should be clearly stated.

Ex ante commitments

Ex ante commitments are not imposed by the NCA or the ECB but proposed by the applicant prior to the licence decision. However, the competent authorities are allowed to make suggestions.

The objective of ex ante commitments is to provide assurance to the competent authority that the assessment criteria will be met.

Ex ante commitments take the form of a written statement signed by the applicant.

Ex ante commitments are taken into account in the NCA's and the ECB's respective assessments and are presented in the licence decision as agreed conditions or obligations.

6.3 Due process

The NCA can reject a licence application following its assessment, or it can propose a positive decision in its proposal to the ECB. Following its own assessment, the ECB can then either confirm the decision proposed by the NCA or reject it.

Right to be heard

When a licence application is to be rejected by the ECB, or when conditions or obligations are to be imposed, the applicant is given the opportunity to comment.

This is called the “right to be heard” and is a principle enshrined in the Charter of Fundamental Rights of the European Union.[26]

The right to be heard is granted to all applicants whose authorisation is to be rejected by the ECB or whose authorisation is to carry conditions or obligations.

For licence applications, the time limit for submitting comments is three working days.

There are, however, instances when the right to be heard does not apply:

- when conditions or obligations concern statutory provisions with which the application must comply;
- when the conditions or obligations have been pre-agreed with the applicant;
- when the conditions or obligations qualify as reporting requirements in accordance with the applicable legal framework.

Access to application file

Following a decision, the applicant has the right to ask the NCA or the ECB for access to the application file.

Access to the file could arise both at the national level (e.g. in cases where the licensing application is rejected by the NCA) and at ECB level (e.g. in cases where the licensing application is rejected by the ECB or where conditions or obligations are proposed). This right of access is an essential component of the right to defence, the right to good administration and the right to be heard.

[26] See also Article 31 of the SSM Framework Regulation.

7 Withdrawal and lapsing of licences

An authorisation for a credit institution may be withdrawn by the ECB either on its own initiative or on the basis of a proposal from the NCA of the Member State where the institution is established. The applicable process for the withdrawal of the licences is defined in national law, while cooperation between the NCA and the ECB is largely the same as that for granting authorisations, albeit with certain deviations depending on whether the withdrawal has been requested by the supervised entity itself or initiated by the supervisor (the NCA or the ECB).

If the supervised entity has asked the NCA to withdraw its authorisation, for example because it no longer conducts any banking business, the NCA and the ECB jointly assess whether the applicable preconditions have been met. The ECB decides whether the conditions for the withdrawal of authorisation according to national and EU law have been fulfilled. In particular, clear and indisputable confirmation is required that the entity no longer holds any deposits or other repayable funds.

If the withdrawal of a credit institution's licence is initiated by the supervisor, for example because the institution no longer meets the prudential requirements or can no longer be relied on to fulfil its obligations towards its creditors, a full and detailed joint assessment is conducted to substantiate the justification for the withdrawal of the licence, taking into consideration the supervisory history of the institution concerned, as well as the relevant interests involved, for example the risk to depositors. In such cases, pursuant to the SSM Regulation, the resolution authorities may also become involved.

Lapsing of authorisation occurs when a credit institution's authorisation ceases to exist in the situations referred to in relevant Union or national legislation. This may be caused by specific national and legally defined triggers, which do not generally involve supervisory discretion or a decision by the competent authority. There are three typical situations in which, according to national law, an authorisation may lapse:

- the credit institution does not make use of the authorisation for 12 months;
- the credit institution expressly renounces the authorisation;
- the credit institution has ceased to engage in business for more than six months.

Subject to national law, an effect similar to a lapsing of the authorisation may occur if the credit institution itself ceases to exist, for instance due to a merger with another company. In such cases, the authorisation ceases to exist at the same time as the institution does. In these cases, the same procedure applies as for the lapsing of authorisation.

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For specific terminology please refer to the SSM glossary.