

EBA/CP/2016/24

20 December 2016

Consultation Paper

Draft Guidelines on supervision of significant branches

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in Section 5.2.

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 20 March 2017. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

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

2. Executive Summary

These guidelines are adopted with a view to specifying how the consolidating supervisor, the home and the host competent authority should, within the framework of supervisory colleges established either under Article 116 or under Article 51 (3) of Directive 2013/36/EU (CRD IV), cooperate to prudentially supervise and coordinate monitoring, including the assessment of recovery planning, for certain significant branches requiring intensified supervision ('significant-plus' branches).

To assess whether a branch, designated as significant in accordance with article 51 of Directive 2013/36/EU, should also be classified as 'significant-plus', an 'intensification test' is put in place: the competent authorities should assess, on the basis of certain parameters, the importance of the branch for the group or the institution as well as its importance for the financial stability of the host Member State where branch operated. For the purposes of the intensification test the competent authorities should also consider whether the branch performs in the host jurisdiction critical functions.

Essentially, a branch significant under Article 51 of Directive 2013/36/EU, which is assessed, either as important for the institution or the group or as performing critical functions or as important for the financial stability of the host Member State, should be deemed as 'significant-plus' that would entail coordinated approach to supervisors. The organisation of supervision and the assessment of recovery planning for such a significant-plus branch should be performed in accordance with these guidelines.

These guidelines do not interfere with the tasks and responsibilities conferred on the consolidating supervisor and the home and host competent authorities by Directives 2013/36/EU or 2014/59/EU but merely aim at establishing a framework of effective and efficient cooperation within colleges of supervisors for exercising of those tasks and the discharging those responsibilities.

These guidelines also do not limit in any form freedom of institutions to establish branches in other Member States, nor do they introduce additional burden on those branches that are deemed as significant-plus in the meaning of these guidelines.

Therefore, the guidelines elaborate on the already existing legal frameworks on the operation of colleges of supervisors, on information exchange between home and host competent authorities and on concluding joint decisions as set out in the pertinent Commission Regulations: for that matter, the guidelines endeavour precisely to achieve the best possible outcome for the supervision and recovery planning of those significant-plus branches.

Where a branch is determined as significant-plus the approach to supervision introduced by these guidelines entails that:

- (a) a separate branch risk assessment should be performed for it as part of SREP;
- (b) the college Supervisory and Examination Programme (SEP) should include specific reference thereto;
- (c) regular on-the-spot checks and inspections should be organised between the consolidating supervisor and the home and host competent authorities as well as joint meetings with the branch management;
- (d) supervisory intelligence should be extensively shared within the college framework between the consolidating supervisor and the host and host authorities to ensure that properly intensified supervision and recovery planning is achieved;
- (e) the application of supervisory and precautionary measures taken in relation to that branch should be coordinated within the college framework including macroprudential measures whose voluntary reciprocal application should be contemplated;
- (f) consistency of communication across the group, institution and branch should be ensured;
- (g) the institution or the group recovery planning should endeavour to properly reflect the significant-plus branch; and
- (h) to achieve all that, an efficient task allocation mechanism should be employed within the supervisory college and the possibility of delegation of tasks should also be examined.

Where dissenting views arise among competent authorities on issues relating to these guidelines, the authorities involved should endeavour to seek the EBA's opinion.

Next steps

The guidelines will be finalised following the completion of the public consultation. The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from [dd.mmm.yyyy].

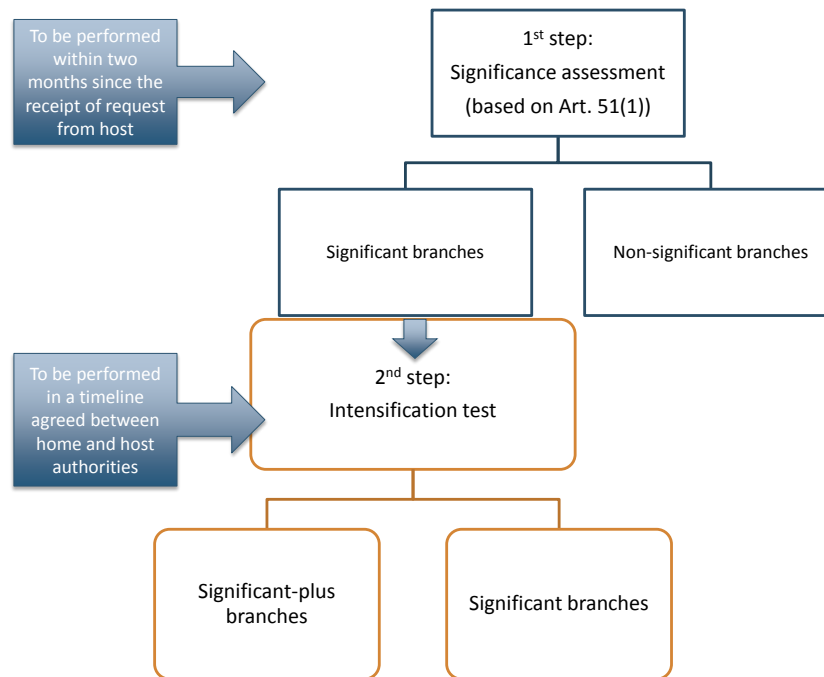
3. Background and rationale

1. According to the relevant legislation, the ultimate responsibility for branch supervision, including the assessment of recovery planning lies with the competent authority of the home Member State. However, the competent authorities of the host Member State and the consolidating supervisor of the pertinent group have tasks and competences which are relevant in that respect. The relevant legal framework for branch supervision, including the assessment of recovery planning is set, primarily, in Directives 2013/36/EU¹ and 2014/59/EU².
2. There is therefore a need to issue guidelines, on the basis of Articles 16 and 21 of the EBA Regulation³, to harmonise the supervisory framework and achieve consistency with specifying how the consolidating supervisor, the home and the host competent authorities should, within the framework of supervisory colleges established either under Article 116 or under Article 51(3) of Directive 2013/36/EU, cooperate to carry out prudential supervision and coordinate monitoring, including the assessment of recovery planning for certain branches requiring intensified supervision ('significant-plus' branches for the purposes of these guidelines).
3. To assess whether a branch, which has been designated as significant in accordance with Article 51 of Directive 2013/36/EU, should also be classified as 'significant-plus' for the purposes of these guidelines, competent authorities should apply an 'intensification test'. Basically, what needs to be assessed, further to the assessment made in accordance with Article 51, is the branch's importance for the group or the institution and importance for the financial stability of the host Member State as well as the branch's performance of critical function in the host jurisdictions (see chart below).

¹ OJ L 176/338

² OJ L 173/90

³ OJ L 331/12



4. These guidelines are developed on the premise of the collegiate structure having regard that supervision of branches which are significant under Article 51 of Directive 2013/36/EU already presupposes such a structure under paragraph 3 of that Article, in accordance with which, where a college of supervisors under Article 116 of Directive 2013/36/EU has not been established, the competent authorities supervising an institution with significant branches in other Member States “shall establish and chair a college of supervisors”.
5. Henceforth, the scope of these guidelines is, basically, limited only to those significant branches, in terms of Article 51 of Directive 2013/36/EU, whose intensification test has resulted in them being identified as ‘significant-plus’. Only the Section 4.1 of these guidelines apply to all institutions’ branches which should be assessed as to their importance for the institution or the group and for their performing of critical functions by the consolidating supervisor or the home competent authorities independently of the assessment made by the host authority in accordance with Article 51 of Directive 2013/36/EU.
6. These guidelines do not interfere with the tasks and responsibilities conferred on the consolidating supervisor and the home and host competent authorities by the relevant legislation, but aim at establishing a framework of effective and efficient cooperation within colleges of supervisors for the exercise of those tasks and the discharging of those responsibilities.
7. These guidelines also do not limit in any form freedom of institutions to establish branches in other Member States, nor do they introduce additional burden on those branches that are deemed as significant-plus in the meaning of these guidelines.



8. The guidelines elaborate on the already existing framework on the operation of college of supervisors as set out in the relevant Commission Delegated and Implementing Regulations⁴ to provide further guidance on how colleges should work to achieve the best possible outcome for the supervision and recovery planning of significant-plus branches.
9. The guidelines have also regard to the Commission Regulatory and Implementing Regulations on information exchange⁵ as well as to the Commission Implementing Regulations on Joint Decisions⁶. It is on the basis of those regulations and under the general college framework that guidance is provided on how supervision and the assessment of recovery planning of significant-plus branches should be organised to introduce the best practice.
10. The intensification test to identify significant-plus branches should be run independently by the consolidating supervisor, the home and the host competent authorities. The consolidating supervisor or the home competent authority should be mostly responsible for checking whether the branch is important for the group or institution, whereas the host competent authorities should mostly determine how important the branch is for the financial stability in the host Member State, while both should determine whether the branch offers any critical functions in the host Member State. Where the consolidating or the home competent authorities have assessed that the branch satisfies the intensification test criteria but the host competent authority does not apply the process of Article 51 of Directive 2013/36/EU, the branch cannot be determined as significant-plus. However, the consolidating supervisor or the home competent authority should endeavour to communicate its views to the host supervisor.
11. Where, on the other hand, a branch, which has been determined as significant in accordance with Article 51 of Directive 2013/36/EU, is regarded, either by the consolidating supervisor or the home competent authority as important for the group or the institution, or as performing critical function in the host Member State, or by the host authority as important for the financial stability including when performing critical functions in the host Member State, then this branch should be deemed as significant-plus and these guidelines should be fully applied for its supervision and the assessment of recovery planning.
12. In terms of the application of supervisory review and evaluation process (SREP), the group risk assessment or the SREP report of an institution should provide a distinct and noticeable reference to the supervisory assessment of any significant-plus branch, including an assessment of material risks the branch is or might be exposed to, the branch's business model and strategy, and the risks that the branch poses to the financial system in the host Member State (the 'branch risk assessment'). This branch risk assessment should be included as an annex to the group risk assessment report or to the SREP report in a similar fashion as SREP reports for subsidiaries of the group are attached.

⁴ Commission Delegated Regulation (EU) No 2016/98, OJ L 21/2 and Commission Implementing Regulation (EU) No 2016/99, OJ L 21/21

⁵ Commission Delegated Regulation (EU) No 524/2014, OJ L 148/6 and Commission Implementing Regulation (EU) No 620/2014, L 172/1

⁶ Commission Implementing Regulation (EU) No 2016/100, OJ L 21/45 and Commission Implementing Regulation (EU) No 710/2014)OJ L 188/19



13. The consolidating supervisor or the home competent authority should ensure that the branch risk assessment captures the assessment of all SREP elements that are relevant to the branch and provide an overview of any findings from on-site inspections and on-the-spot checks performed by the competent authorities of the home or host Member States relevant for the risk assessment of the institution or the financial system in the host Member State. Further, the college Supervisory Examination Programme (SEP) should, in case of a significant-plus branch, take into account the outcome of that branch's risk assessment.
14. With regard to on-the-spot checks and inspections of branches, to the extent they are planned in advance, they should be included in the college SEP. In order to ensure that the consolidating supervisor or the home and the host competent authorities have an overview of the planned on-the-spot checks and inspections of branches, even the ones that are not performed on a joint basis, and to avoid duplication of supervisory efforts and requests to institution. The college SEP should, as far as practicable, include information on all such activities organised either by the home or host competent authority, their scope, timing and planned resources.
15. As regards information exchange, the consolidating supervisor and the home and host competent authorities involved in the supervision of significant-plus branches should ensure that they share all the information pertaining to the group, the institution or the branch, which is adequate, accurate and relevant for the branch's effective and efficient supervision. Competent authorities should also coordinate the application of supervisory measures and precautionary measures taken in relation to the branch, within the framework of colleges of supervisors. Further, the consolidating supervisors and the home competent authorities should consider the information regarding macroprudential measures received from the host competent authorities for the purposes of deciding to extend of the measures to the entire institution under the provisions of voluntary reciprocity of macroprudential measures.
16. In terms of communication with the institutions and branches, the consolidating supervisor and the home and host competent authorities should strive to ensure that the messages communicated to the institution or the group concerning the branch are consistent. In terms of recovery planning, the consolidating supervisor, the home authority of branch should prepare the overall assessment of the group recovery plan or institution's recovery plan, and reflect the input received from the host competent authorities.
17. Moreover, these guidelines provide that a task allocation mechanism should be established within the college operational framework. The mechanism should avoid duplication of tasks, optimise supervisory resources, employ all available intelligence and expertise, succeed in removing unnecessary burdens for the supervised institutions and better reflecting the supervisory expertise in terms of technical skills or knowledge of the local market. The consolidating supervisor, the home and the host competent authorities should agree on the terms of the task allocation and duly reflect them in the college written coordination and cooperation arrangements. They should also examine the legal and operational feasibility of the delegation of tasks with a view to establish it as an appropriate task allocation mechanism.
18. Where dissenting views arise among competent authorities on issues relating to these guidelines, those authorities should endeavour to file with the EBA a request referred to in Article 31(c) of Regulation (EU) No 1093/2010; where a request has been filed, all competent authorities involved

should provide adequate information to the EBA, including arguments supporting their distinct views, so as to enable the EBA to form an opinion on the disputed issues; all competent authorities involved should subsequently endeavour to take into account the EBA's opinion.



4. Draft guidelines

EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

on supervision of significant branches



1. Compliance and reporting obligations

Status of these guidelines

2. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁷. 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.
3. 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

4. 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 [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
5. Notifications will be published on the EBA website, in line with Article 16(3).

⁷ 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).

2. Subject matter, scope and definitions

Subject matter

6. These guidelines specify, on the basis of Article 21 of Regulation (EU) 1093/2010⁸, how the consolidating supervisor, the home and the host competent authorities should, within the framework of colleges of supervisors established either under Article 116 or under Article 51 (3) of Directive 2013/36/EU⁹, cooperate to prudentially supervise and coordinate the exercise of their powers referred to in Title V, Chapter 4 and Title VI, Chapters 1 and 3 of that Directive and Title II, Section 2 of Directive 2014/59/EU¹⁰.

Scope of application

7. These guidelines apply only in relation to those significant branches referred to in Article 51 of Directive 2013/36/EU whose intensification test performed in accordance with Section 4.2 results in them being deemed 'significant-plus' branches for the purpose of these guidelines.
8. Section 4.1 on the mapping of the institution or the group performed in accordance with Articles 2 and 23 of the Commission Delegated Regulation (EU) 2016/98 and Articles 2 and 17 of the Commission Implementing Regulation (EU) 2016/99 applies in relation to all branches.

Addressees

9. These guidelines are addressed to competent authorities as defined in point (i) of Article 4(2) of Regulation (EU) No 1093/2010, be them consolidating supervisor or competent authority of the home or host Member State ('home' and 'host' competent authority) as referred to in Article 4 (1) points (40) to (44) of Regulation (EU) No 575/2013¹¹.

Definitions

10. Unless otherwise specified, terms used and defined in Regulation (EU) No 575/2013, Directive 2013/36/EU or Directive 2014/59/EU, have the same meaning in the guidelines.

⁸ OJ L 331/12

⁹ OJ L 176/338

¹⁰ OJ L 173/90

¹¹ OJ L 176/1



3. Implementation

Date of application

11. These guidelines apply from **dd.mm.yyyy.**

Assistance in application

12. Where dissenting views arise among competent authorities on issues relating to these guidelines, those authorities should endeavour to file with the EBA a request referred to in Article 31(c) of the EBA Regulation; where a request has been filed, all competent authorities involved should provide adequate information to the EBA, including arguments supporting their distinct views, so as to enable the EBA to form an opinion on the disputed issues; all competent authorities involved should subsequently endeavour to take into account the EBA's opinion.

4. Assessment of branch significance and identification of significant-plus branches

13. To assess whether a branch, which has been designated as significant in accordance with Article 51 of Directive 2013/36/EU should also be classified as 'significant-plus' for the purposes of these guidelines, competent authorities should apply the process referred to in the following paragraphs.
14. Where in a college of supervisors referred to in Article 116 of Directive 2013/36/EU, the consolidating supervisor and the home competent authority of a given branch are different, they should work in close cooperation on the basis of Section 5.8 to ensure that the branch is supervised in accordance with these guidelines.

4.1 Branch significance and mapping: initial assessment and updates

15. Without prejudice to the stipulations of Article 51 of Directive 2013/36/EU, the consolidating supervisor or the home competent authority should, in the context of the mapping of the institution or the group performed in accordance with Articles 2 and 23 of the Commission Delegated Regulation (EU) 2016/98 and Articles 2 and 17 of the Commission Implementing Regulation (EU) 2016/99, perform, their own assessment of the importance of a given branch for that particular institution or group on the basis of the criteria referred to in paragraph 26.
 16. The consolidating supervisor or the home competent authority should note their assessment on the branch's importance to the institution or the group in the respective field of the mapping template referred to in Articles 2 and 17 and in the Annex I of the Commission Implementing Regulation (EU) 2016/99.
 17. Where the consolidating supervisor or the home competent authority have, on the basis of their assessment, determined that a branch is important for the institution or the group, they should communicate their view to the host competent authority, independently or in the process of finalising the mapping of the institution or the group in accordance with Article 2 of the Commission Implementing Regulation (EU) 2016/99, and invite that authority to consider applying the process referred to in Article 51 of Directive 2013/36/EU to determine the branch as significant.
 18. Where the consolidating supervisor or the home competent authority has communicated to the host competent authority that they consider the branch as important for the institution or the group, the host competent authority should consider whether to apply the process of
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Article 51 of Directive 2013/36/EU and provide, either independently or in the context of its views or comments on the mapping of the institution or the group referred to in Article 2 of the Commission Implementing Regulation (EU) 2016/99, the consolidating supervisor or the home competent authority with their views.

19. The consolidating supervisor or the home competent authority should assess the importance for the institution or the group of a given branch on a periodic basis and at least in every update of the mapping of the institution or the group referred to in Article 2 of the Commission Implementing Regulation (EU) 2016/99. The host competent authority should ensure continuous monitoring of the conditions set out in Article 51 of Directive 2013/36/EC for branches within its supervisory remit.
20. Where the consolidating supervisor or the home competent authority considers that the branch is important for the institution or the group, but the host competent authority does not deem it significant in the meaning of Article 51 of Directive 2013/36/EC, the consolidating supervisor or the home competent authority should nevertheless invite the host competent authority to participate in the college of supervisors in accordance with Article 3(2) of the Commission Delegated Regulation (EU) 2016/98 and Article 3(1)(b) of the Commission Implementing Regulation (EU) 2016/99.
21. After the branch has been designated as significant in accordance with Article 51 of Directive 2013/36/EU, the consolidating supervisor and the home competent authority should, without undue delay, update the mapping of the institution or the group. In particular, it should be noted in the mapping of the institution or the group whether the host authority participates in the relevant college as a member (significant branch) or as an observer (non-significant branch), as provided in Article 4 of the Commission Delegated Regulation (EU) 2016/98, and the list of the college members and observers should be updated accordingly.

4.2 Supervisory intensification test for significant branches

22. The consolidating supervisor or the home and the host competent authorities should assess on the basis of the following paragraphs whether a branch which has been determined as significant in accordance with Article 51 of Directive 2013/36/EU, should also be deemed as 'significant-plus' branch for the purposes of these guidelines ('intensification test').
23. The consolidating supervisor or the home and host competent authorities should perform the intensification test on the basis of their independent assessments considering all available information, including from recovery and resolution plans, and considering the size, scope, nature and systemic importance of its activities in the host Member State and significance for the institution or the group.
24. The consolidating supervisor or the home and the host competent authorities should jointly agree on the outcomes of the intensification test. Where dissenting views on the outcomes of



the intensification test arise among competent authorities those authorities should endeavour to file with the EBA a request referred to in Article 31(c) of the EBA Regulation; where a request has been filed, all competent authorities involved should provide adequate information to the EBA, including arguments supporting their distinct views, so as to enable the EBA to form an opinion on the disputed issues; all competent authorities involved should subsequently endeavour to take into account the EBA's opinion.

25. For the purposes of the intensification test:

- (a) the consolidating supervisor or the home competent authority should determine whether the branch is important for the institution or group and whether that branch performs critical functions in the host Member State ;
- (b) the host competent authority of the branch should determine whether the branch is of significant importance to the financial stability in the host Member State, including whether the branch performs critical functions in the Member State.

26. The branch should be considered important for the institution or for the group where *inter alia*:

- (a) the branch meets the criteria provided in Article 7(2)(a) – (e) of the Commission Delegated Regulation (EU) 2016/1075 for the institution or for the group; or
- (b) the branch total risk exposure amount (TREA) forms a significant part of the institution or the group consolidated TREA.

27. The branch should be considered of significant importance to the financial stability in the host Member State, where *inter alia*:

- (a) the branch assets form a significant part of the GDP in the host Member State; or
- (b) the branch can be considered as systemically important on a similar grounds as other systemically important institution (O-SII) based on the assessment specified in the EBA guidelines¹² when applied to the branch-specific data, where such is available.

Question for the consultation:

What are the respondents' views on the determination of 'significance-plus' of the branch using the methodology for the identification of O-SII and whether such assessment can be meaningfully performed based on the data available to the host competent authorities?

28. The branch should be considered as performing critical functions as defined in Article 2(35) of Directive 2014/59/EU, with a focused assessment in particular in the following areas:

¹² EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU in relation to the assessment of other systemically important institutions (EBA/GL2014/10)



- (a) retail banking;
- (b) corporate banking;
- (c) payments, clearing, settlement;
- (d) custody;
- (e) intra-financial system borrowing and lending; or
- (f) investment banking for example capital markets, derivative, or trading activities.

Question for the consultation:

What are the respondents' views on the approach to and the criteria used for the identification of significant-plus branches (intensification test)?

- 29. The consolidating supervisor and the home and host competent authorities should take into account, for the purposes of the intensification test, any related information, including that deriving from the institution's or the group's ICAAP, ILAAP, SREP, recovery or resolution planning.
- 30. For the purposes of the intensification test, competent authorities should also consider information provided by an institutions and in particular where the institution or the EU parent undertaking has itself acknowledged, including for the purposes of their ICAAP, ILAAP, recovery or any other planning, the branch that has been previously determined as significant in accordance with Article 51 of Directive 2013/36/EU, as important for the group or institution, or as performing critical functions.
- 31. The consolidating supervisor or the home competent authority should ensure that the determination of the branch as significant-plus is duly noted in the mapping of the institution or the group and communicated to the supervisory college, as appropriate.
- 32. The consolidating supervisor, the home competent authority, and the host competent authority, should agree on the timeline for the performance of the intensification test and should fully and closely cooperate in order to request from the institution or the EU parent undertaking, according to their competence, any information necessary for the performance of the test and exchange such information among themselves.

5. Ongoing supervision of significant-plus branches

33. The ongoing supervision of significant-plus branches should be organised and performed having regard to the Section 5.1 to 5.8 of these Guidelines.
34. The consolidating supervisor and the home and host competent authorities should endeavour to ensure that the operational context of the pertinent college fully enables the supervision of the significant-plus branches in accordance with these guidelines.

5.1 Branch risk assessment

35. The consolidating supervisor or the home competent authority and the host competent authority should insure that the significant-plus branch is subject to the effective and efficient supervisory assessment under the supervisory review and evaluation process (SREP) applied to the institutions and the group. In particular, the competent authorities need to ensure that the group risk assessment or the SREP report of an institution referred to in the Commission Implementing Regulation (No) 710/2014 provide a distinct and noticeable reference to the supervisory assessment of any significant-plus branch, including an assessment of material risks the branch is or might be exposed to, the branch's business model and strategy, and the risks that the branch poses to the financial system in the host Member State (the 'branch risk assessment').
36. This branch risk assessment should be included as an annex to the group risk assessment report or to the SREP report for the institution.
37. The consolidating supervisor or the home competent authority should ensure that the branch risk assessment captures the assessment of all SREP elements that are relevant to the branch. For that purpose, the branch risk assessment should not include the assessment of capital adequacy as this is not relevant at a branch level, however, the assessment should include an assessment of the appropriateness of internal capital and liquidity allocation to the risk exposures borne by the branch prepared on the basis of the group or institution's ICAAP and ILAAP information, as this may be deemed relevant for the branch. At a minimum the branch risk assessment should include the outcomes of the assessment of the following elements:
 - (a) branch-specific business model and strategy and its role/position within the business model and strategy of an institution;



- (b) branch-specific governance, risk management controls, and the effect to which the branch is integrated into the internal governance and institution-wide controls of the institution;
 - (c) material risks to capital, liquidity and funding the branch is or might be exposed to, as provided in the EBA SREP Guidelines and highlight any risks to the viability of the institution that stem or may stem from the risks borne by the branch;
 - (d) the risk the branch may pose to the financial system of the host Member State;
 - (e) the macroeconomic environment in which the branch operates.
38. In addition to the above, the branch risk assessment should provide an overview of any findings from on-site inspections and on-the-spot checks performed by the competent authorities of the home or host Member States relevant for the risk assessment of the institution or the financial system in the host Member State.
39. To prepare the branch risk assessment referred to in the previous paragraphs, the consolidating supervisor or the home competent authority should ensure that they have obtained and duly considered appropriate input from the host competent authority. The host competent authorities should, at a minimum, provide the following input:
- (a) branch-specific business model and strategy in the context of the host Member State operating environment;
 - (b) risks that the branch may pose to the financial stability of the host Member State;
 - (c) conduct risk and information on any conduct risk events in relation to the branch operations;
 - (d) the macroeconomic environment in which the branch operates.
40. The consolidating supervisor, the home and host competent should coordinate the timing for the development of the branch risk assessment so as to reflect the timing for the preparation of the group risk assessment or the SREP reports (i.e. the SREP cycle). Where relevant, such coordination should be performed within the framework of the college of supervisors and be reflected in the college supervisory examination programme.

Question for the consultation:

What are the respondents' views on the proposed approach to introducing branch risk assessment to be performed for significant-plus branches as part of SREP?



5.2 Coordination of activities and supervisory examination programme

41. The college supervisory examination programme ('college SEP') referred to in Article 11 and Article 20 of the Commission Implementing Regulation (EU) 2016/99 should, in case of a significant-plus branch, take into account the outcome of that branch's risk assessment performed in accordance with Section 5.1 of these Guidelines.
42. Where the branch risk assessment has identified significant risks to capital, liquidity and funding the branch is or might be exposed to, and/or viability of the institution stemming from the branch, including from the branch's governance and risk controls, the conclusions of the assessment should inform the supervisory activities planned by the consolidating supervisors, home and host authorities to be noted in the college SEP.
43. While developing the college SEP, the consolidating supervisor and the home and host competent authorities should discuss the allocation of work and division of tasks for the performance of the planned supervisory activities concerning the significant-plus branch and they should explore the possibility for some of these activities to be performed jointly by the home and host competent authorities (see also Section 5.8).
44. In order to avoid duplication of supervisory tasks and duplication of information requests to the supervised institution, concerning the significant-plus branch, the home and host competent authorities should consider when developing the college SEP appropriate allocation of tasks as specified in Section 5.8.

5.3 On-the-spot checks and inspections of branches

45. On-the-spot checks and inspections of branches, to the extent they are planned in advance, should be included in the college SEP developed in accordance with Articles 16 and 31 of the Commission Delegated Regulation (EU) 2016/98.
46. In order to ensure that the consolidating supervisor or the home and the host competent authorities have an overview of the planned on-the-spot checks and inspections of branches, even the ones that are not performed on a joint basis, and to avoid unnecessary duplication of supervisory efforts and requests to institution, the college SEP should, as far as practicable, include information on all such activities organised either by the home or host authority, their scope, timing and planned resources.
47. When the consolidating supervisor or the home or host competent authorities decide on the timing of jointly performed activities, the authority initiating and organising the activities should take due consideration of the participating authority's needs in terms of resources and supervisory cycles, and in particular SREP cycle.



48. On-the-spot checks and inspections in a branch that have not been originally planned but are initiated during the year should be communicated from one authority to the other without undue delay, and duly reflected in the updated college SEP.
49. The consolidating supervisor and the home and host competent authorities should ensure that the frequency or number of the on-the-spot, checks and inspections for significant-plus branches on a yearly basis is higher than for other types of branches.
50. The competent authority initiating an on-the-spot check or inspection (the ‘initiator’) in a significant-plus branch should apply the following process:
 - (a) the initiator should invite the other authority to participate in the performance of the activity when decision about the activity has been made in a reasonable timeframe allowing competent authorities to organise their participation (generally six weeks in advance of the start of the activity in case of the pre-planned activity, but shorter notices in case of extraordinary activity). While doing so the initiator should inform the invited authority about the scope of the activity in order to allow them to make an informed decision;
 - (b) the authority receiving the invitation should confirm its participation, without undue delay, and at the latest within one week since the receipt of the invitation referred to in point (a), unless the on-the-spot check or inspection is of an urgent nature, in which case the authority receiving the invitation should confirm its participation within a reasonable timeframe set by the other authority, in light of the particular circumstances warranting an on-the-spot check or inspection;
 - (c) where the authority receiving the invitation decides to participate in the activity then:
 - i. the initiator should, to the extent possible, schedule the activity, including the timing of the meetings organised within the performance of the activity, with due consideration to the availability of the participating authority;
 - ii. the initiator should ensure that information relevant to the performance of the activity is made available to the participating authority, subject to the national law of the Member State, where the check or inspection is carried out;
 - iii. the initiator should draft the report summarising the findings from on-the-spot checks or inspections and should allow reasonable time for the participating authority to comment within the specified timeline so as to enable the timely finalisation of the report;
 - iv. the authorities participating in the activity should strive to reach an agreement on the report summarising the findings from on-the-spot checks



or inspections prior to their communication to the institution and, where appropriate in line with the administrative procedures, the branch;

- v. once the authorities participating in the activity finalise the report, the consolidating supervisors or home competent authority should have it communicated to the institution or the group and, where appropriate in line with the administrative procedures, the host competent authority to the management of the branch;
- vi. where the authorities participating in the activity failed to reach an agreement on the report summarising the findings from on-the-spot checks or inspections, then the authority initiating and organising the activity remains responsible for the finalisation of the report and its communication to the institution or to the branch's management.
- vii. where the authority receiving the invitation decides not to participate in the activity then the initiator should draft the report summarising the findings from on-the-spot checks or inspections and inform the consolidating supervisors, home or host competent authority about the final findings as communicated to the institution and to the branch.

51. The consolidating supervisor or the home competent authority should invite the host competent authority to participate in on-the-spot checks or inspections carried out at the institution when such activities are relevant to the significant-plus branches (in particular this should include meetings with the group or institution management for the issues concerning such branch, see also Section 5.6).

5.4 Information needed for the supervision of significant-plus branches

52. Without prejudice to the provisions of Commission Delegated Regulation (EU) 524/2014 and Commission Implementing Regulation (EU) 620/2014, the consolidating supervisor and the home and host authorities involved in the supervision of significant-plus branches should ensure that they share, by means of making available on own initiative or upon request, exchange all the information pertaining to the group, the institution or the branch, which is adequate, accurate and relevant for the branch's effective and efficient supervision as set out in these guidelines.

53. When assessing the relevance of a particular piece or set of information, the consolidating supervisor and the home and host competent authorities should, in a proportionate manner and on a risk basis, endeavour to anticipate the impact of such information on the following:

- (a) the activities of the branch;



- (b) the governance and organisation of the branch, the institution or of the group as a whole;
 - (c) the potential impact on the financial stability of any Member State, including the one where the branch operates;
 - (d) the potential relevance of the information for the host competent authority's decision regarding the imposition of the general good conditions in relation to the branch, the activities t in the host Member State; and
 - (e) the potential impact of the risks borne by the branch on the institution and its viability.
54. The consolidating supervisor and the home and host competent authorities should, without prejudice to the provisions of Commission Delegated Regulation (EU) 524/2014 and Commission Implementing Regulation (EU) 620/2014, ensure that they at least share, in a proportionate and appropriate manner, adequate information on the following items:
- (a) internal and external audit reports and institution internal risk reports focusing on the branch's position within the institution and on the risks borne by the branch;
 - (b) liquidity reports from the institutions collected in accordance with Article 415 of Regulation (EU) No 575/2013;
 - (c) any relevant information that either the home or host competent authorities obtained from the institution while developing the branch risk assessment in accordance with Section 6.1 of these Guidelines;
 - (d) reports summarising the findings from on-the-spot checks and inspections of branches, undertaken either by the consolidating supervisor, home or host competent authorities in accordance with Section 5.3 of these guidelines, focusing on the branch's position within the group and on the risks borne by the branch;
 - (e) information on branch specific supervisory and other measures taken or planned by the consolidating supervisors or home competent authority (see also Section 5.5);
 - (f) any precautionary measures taken by the host competent authority based on Article 43 of Directive 2013/36/EU and measures taken based on article 50(4) of that Directive (see also Section 5.5);
 - (g) information on upcoming major changes affecting the branch such as changes in IT systems, business model of the institution, and any relevant business continuity and contingency arrangements;
 - (h) information regarding operational events including any substantial faults or disruptions in services provided to customers or in payment services or IT systems



insofar as relevant to the branch, including cyber or information security attacks and threats as well as disruptions or faults damaging or jeopardizing the capacity of the branch to continue its business activities or fulfil its obligations as payment systems and payment services provider;

- (i) information regarding strategies or business plans relating to the future operations of the branch, including but not limited to any offering or significant new products or services not covered by Article 39 of Directive 2013/36/EU;
- (j) documentation emanating from the application of Articles 143, 151(4) and (9), 283, 312 and 363 in Regulation (EU) No 575/2013;
- (k) information relevant for the assessment of the group recovery plan or institution's plan.

55. Such information should be exchanged in a timely manner and in written or electronic form, making as far as possible use of secure means of communication, aiming to facilitate the performance of the respective supervisory tasks in an efficient and effective way.

56. In liquidity stress situations, the consolidating supervisor or the home competent authority, in addition to the information envisaged in Article 17(3) of the Commission Delegated Regulation (EU) No 524/2014, should immediately notify the host competent authority of the expected impact of the stress on the liquidity of the institution and particularly in the currency(ies) in which the branch operates.

Question for the consultation:

What are the respondents' views on the proposed approach to the collection and exchange of information needed for the supervision of significant-plus branches?

5.5 Application of supervisory measures and sanctions

57. The consolidating supervisor or home competent authority should apply supervisory measures as provided in Articles 104 and 105 of Directive 2013/36/EU to the institution based on the SREP findings and evidences by the specific findings of the branch risk assessment, when measures are applied in relation to the risks borne by the branch.

58. Without prejudice to Article 41 of Directive 2013/36/EU, the consolidating supervisor, the home and host competent authorities, should coordinate the application of supervisory measures and precautionary measures taken in relation to the branch, within the framework of colleges of supervisors. In particular, competent authorities should coordinate:

- (a) type of the measures to be taken;



- (b) timing of the measures and their duration;
 - (c) scope of the measures in terms of exposures concerned or governance or any other relevant issues, or individuals, if addressed to individuals; and
 - (d) links to the supervisory findings highlighted in the branch risk assessment.
59. Host competent authorities should regularly inform home competent authorities and the consolidating supervisor about any macroprudential measures, or any other measures applied to institutions in the host Member State for the purposes of safeguarding financial stability, that might be relevant to the institutions operating through a significant-plus branch in the host Member State.
60. The consolidating supervisors and the home competent authorities should consider the information regarding macroprudential measures received in accordance with the previous paragraph for the purposes of deciding to extend of the measures to the entire institution under the provisions of reciprocity of macroprudential measures. When deciding on reciprocating macroprudential measures applied in the host Member State to the institution operating through a branch, the consolidating supervisor or the home competent authorities should also consider the following:
- (a) the type, scope and nature of the macroprudential measures, and whether these are 'Pillar 1 type measures' (e.g. changes risk weights in accordance with Article 124 of Regulation (EU) No 575/2013), or 'Pillar 2 type measures' (e.g. risk weight floor applied in accordance with Article 103 of Directive 2013/36/EU);
 - (b) the scope and nature of the operations of the branch, and in particular whether its operations or exposures would have been affected by said macroprudential measure, if operations or exposures were borne by an institution operating in the host Member State through a subsidiary rather than a branch;
 - (c) the macroprudential framework and any existing macroprudential measures in the home Member State that are applicable to an institution (and by its virtue to a branch), and whether these are aimed at addressing the same risk as the measures applied by the host authorities;
 - (d) recommendations of the European Systemic Risk Board setting the minimum standard for reciprocity in macroprudential matters¹³.

¹³ See ESRB Recommendation on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures (ESRB/2015/2)



5.6 Communication framework for a significant-plus branch

61. The consolidating supervisor and the home and host competent authorities should strive to ensure that the messages communicated to the institution or the group concerning the branch are consistent. To this end, the consolidating supervisor and the home and host authorities should ensure that they have consulted each other before issuing any forms of formal communication to the group or institution pertaining to the branch.
62. At a minimum, the consolidating supervisor and the home and host competent authorities should organise a joint annual meeting with the branch management to discuss the following:
- (a) the financial performance of the branch at year-end and any forecasts of the branch performance in the mid-term;
 - (b) the business strategy of the branch and how the branch will contribute to and implement the strategy of the institution;
 - (c) the branch's main activities and its relevant risks; and
 - (d) the supervisory findings concerning the operations of the branch and actions from the institution to remedy the relevant issues.
63. In case where either the consolidating supervisor, the home or host competent authority is not able to participate in this joint meeting, they should inform each other accordingly and should share the conclusions of the meeting and discuss any follow-up actions.
64. The consolidating supervisor, the home and host competent authorities should agree on the form and frequency of a joint meeting with the senior management of the institution to discuss issues more specifically relevant for the significant-plus branch or issues that may potentially affect such branch.
65. Such joint meetings with the institution and with the branch management should be duly reflected in the college SEP.

Question for the consultation:

What are the respondents' views on the proposed approach to the communication framework for a significant-plus branch, including communication with an institution and the branch?



5.7 Roles and responsibilities of home and host authorities in the assessment of the recovery plan

66. Within the process for the assessment of the recovery plan in accordance with Article 6(2) of Directive 2014/59/EU or the process for the assessment of the group recovery plan in accordance with Article 8(1) of this Directive, the consolidating supervisors, the home and host competent authorities involved in the supervision of significant-plus branch should endeavour to form a common understanding on the arrangements to be included in the recovery plan or group recovery plan to ensure the coordination and consistency of measures to be taken at the level of the institution and at the level of the branch.
67. The consolidating supervisor or the home competent authority should share the group recovery plan or the institution's plan respectively with the host competent authorities in accordance with the timeline established in the college of supervisors for the assessment of the recovery plan. The host competent authority should also inform the consolidating supervisor and the home competent authority of any aspect of recovery planning relevant to the branch.
68. The host competent authority of the significant-plus branch should provide its input to the assessment of the group recovery plan or institution's recovery plan within the timeline established in the college of supervisors. This input could take the form of general comments to the plan. In addition, host competent authority should provide comments on the parts of the plan related to the branch or comments concerning omissions affecting the coverage of the branch.
69. At a minimum the input from the host competent authority should include the following:
- (a) assessment of how the institution or the group has performed the analysis of critical functions and core business lines with reference to a description of the significant-plus branch and mapping of critical functions and core business lines to that branch;
 - (b) opinion on the institution's or the group strategy and approach towards the branch, as well as analysis of legal and operational interconnectedness, as well as existing arrangements, in particular resulting from the conditions indicated by the host competent authority in the interest of the general good;
 - (c) description of the main activities and services provided by the branch to its main counterparties;
 - (d) analysis of how and when the branch may apply, under the conditions described in the plan, for the use of central bank facilities and identify those assets which are expected to qualify as collateral;
 - (e) assessment of credibility of recovery options, governance/escalation procedures, scenarios and indicators regarding branch, for example in case it is considered to be



part of divestments or other recovery options assumed by the institution or the group;

- (f) information on material risks the branch may cause for the institution or dependencies the institution may have on the branch, or on risks or dependencies between branch and local market participants;
- (g) overall assessment of the degree to which the group recovery plan or institution's plan adequately covers the branch;
- (h) any other issues relevant for the assessment of the completeness, the quality and overall credibility of the plan.

70. The consolidating supervisor or the home competent authority of branch should prepare the overall assessment of the group recovery plan or institution's recovery plan in accordance with the requirements of the Commission Delegated Regulation (EU) 2016/1075, and reflect the input received from the host competent authorities in accordance with paragraph 69 of these guidelines. The consolidating supervisor or home competent authority should consult on the overall assessment report with host competent authorities in accordance with Articles 6(2) and 8(1) of Directive 2014/59/EU.

71. The consolidating supervisor, the home and the host competent authorities should endeavour to ensure that all discussions, consultations and deliberations concerning the assessment of the (group) recovery plan take full account of the timeline for the assessment of that plan set out within the college context.

72. When material deficiencies or impediments identified in the plan relate to the significant-plus branch, such deficiencies and impediments should be duly reflected in the (group) recovery plan's assessment process including in the pertinent joint decision one. Any communication with the (EU parent) institution or the branch on these matters should be duly coordinated between the consolidating supervisor, the home and host competent authorities within the operational framework of the college.

Question for the consultation:

What are the respondents' views to the proposed approach to the cooperation between the consolidating supervisors, home and host competent authorities for the purposes of the assessment of recovery plans?



5.8 Allocation of tasks

73. The consolidating supervisor, the home and host competent authorities should ensure that the operational framework of the pertinent college of supervisors, not only enable but also achieves an efficient and effective allocation of tasks among all authorities involved for supervising a significant-plus branch in accordance with these guidelines.
74. For that purpose, the consolidating supervisor or the home competent authority should regularly assess whether an efficient and effective task allocation enables supervision of significant-plus branch in accordance with these guidelines has been achieved and propose improvements in the college's operational framework by means of amendment of the written arrangement or of the college SEP.
75. The task allocation mechanism established within the college operational framework should be deemed as efficient and effective, when it achieves the following objectives:
- (a) it avoids unnecessary duplication of tasks, optimised supervisory resources, employs all available intelligence and expertise, and it removes unnecessary burdens for the supervised institutions;
 - (b) it better reflects the supervisory expertise in terms of technical skills or knowledge of the local market, so as to ensure that each competent authority performs the tasks for which they are best placed;
 - (c) it better reflects the manner in which the supervised entity that operates on a cross-border basis through significant-plus branches is organised and should be proportionate to the nature, scale and complexity of the supervised entity concerned;
 - (d) suits better the supervision of an institution considering its management organisation (i.e. centralisation/ decentralisation) and in terms of the organisation of its business lines.
76. The consolidating supervisor, the home and the host competent authorities should agree on the terms of the task allocation and duly reflect them in the college written coordination and cooperation arrangements. The college should be duly informed of the existence and, where relevant, outcome of such allocation.
77. Where dissenting views arise among competent authorities on issues relating to the allocation of tasks, those authorities should endeavour to file with the EBA a request referred to in Article 31(c) of the EBA Regulation; where a request has been filed, all competent authorities involved should provide adequate information to the EBA, including arguments supporting their distinct views, so as to enable the EBA to form an opinion on the disputed issues; all competent authorities involved should subsequently endeavour to take into account the EBA's opinion.



78. At a minimum these terms should detail the following:

- (a) the specific activities to be allocated to each authority;
- (b) the relevant applicable legal framework;
- (c) the role and the responsibilities of the authorities involved;
- (d) the type of information to be exchanged among supervisors for the performance of the tasks;
- (e) the language, frequency and the means/forms of the information to be exchanged;
- (f) the standards under which tasks should be executed;
- (g) possible feedback, advice or instructions from one authority to the other;
- (h) the working methods to be used;
- (i) the access to the documentation produced after the task which has been allocated has been accomplished;
- (j) the timetable for completion of the allocated tasks;
- (k) the terms under which the authority to which the task was allocated reports to the college; and
- (l) the terms under which early termination of any task allocation may take place.

79. The consolidating supervisors, the home and host competent authorities should inform, only where appropriate and in accordance with the college's communication framework, the (EU parent) institution and the branch as to the task allocation.

80. For the purposes of putting in place the most efficient task allocation, the consolidating supervisor and the home and host competent authorities should examine the legal and operational feasibility of the delegation of tasks, where such is allowed by the EU or national legislation, with a view to establish it as a task allocation mechanism. The examination of the legal and operational feasibility of the delegation should be made on a voluntary and task basis without prejudice to the competences and responsibilities allocated to national authorities or Union institutions.

81. Any delegation of tasks on voluntary basis should be in line with the EU and national legislation and be fully agreed between the authorities involved at least with regard to the elements referred to in paragraph 78 and in any other element required to establish a legally safe and fully operational mechanism of task allocation.



82. The consolidating supervisor and the home and host competent authorities involved for the purposes of the supervision of the significant-plus branches should work out the best possible allocation of tasks within the college framework in accordance with the previous paragraphs even when and in particular when delegation proper is not deemed as legally or operationally feasible.

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

1. Article 50, 51 and 52 of Directive 2013/36/EU, Capital Requirements Directive (CRD) draws competence and duties of home and host Member States in prudential supervision. These include collaboration between home and host competent authorities concerning supervision, assessment and supervision of significant branches and on the spot checking and inspection of branches in another Member State. Current draft guidelines are based on the EBA's own initiative and elaborate on the already existing legal frameworks on the operation of colleges of supervisors, on information exchange between home and host competent authorities and on concluding joint decisions as set out in the pertinent Commission Regulations.
2. As per Article 16(2) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any guidelines developed by the EBA shall be accompanied by an Impact Assessment (IA) annex which analyses 'the potential related costs and benefits'. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.
3. For the purposes of the IA section of the Consultation Paper, the EBA prepared a short qualitative questionnaire to collect information on the baseline, i.e. the practices currently in place in Member States in relation to the provisions covered under these draft guidelines. The questionnaire targeted national competent authorities. This annex presents the IA with cost-benefit analysis of the policy options included in the guidelines described in this Consultation Paper. Given the nature of the study, the IA is high-level and qualitative in nature.

A. Problem identification

4. The primary problem that the current Guidelines aim to address is potential gaps in the collaboration in colleges and lack of efficiency and effectiveness that may arise in the supervision of significant branches as outlined under Articles 50, 51 and 52 of the CRD.
5. Article 51 of the CRD specifies the minimum criteria that the home competent authorities should account for in the identification and supervision of significant branches. However, the financial institutions with significant cross-border elements may require a more diligent treatment and a closer cooperation between home and host competent authorities depending on the level of their significance.
6. Indeed, for instance given the size and interconnectedness of the financial institutions and accordingly the significance of their branches, the competent authorities may need to specify tasks that are not explicitly covered under the CRD. Firstly, the current criteria under Article 51(1) of the CRD do not differentiate the level of significance across (significant) branches.



Therefore, it is reasonable to argue that a significant branch with a higher risk profile should be subject to a supervision that is different than a significant branch with a relatively lower risk profile. In other words, the current framework is not sufficiently explicitly risk sensitive when significant branches are considered. In practice, competent authority of home Member States applies, if needed, further criteria in their significance assessment of the branches for further differentiation. This unharmonised treatment creates differences in the supervision of cross-border branches across EU Member States. For example, the EU (significant) branches of two systemically important institutions may be subject to different supervisory treatments although they have similar risk profiles.

7. Secondly, the supervisory practices may require a more structured and closer cooperation between home and host competent authorities in the supervision of significant branches with cross-border elements. In theory, the supervision of a significant branch with a larger volume of activities, a greater level of interconnectedness and a higher risk profile is expected to require a closer cooperation between home and host competent authorities than that of a significant institution with relatively lower risk profile and smaller cross-border elements.

B. Policy objectives

8. The main objective of the guidelines, within the mandate of Articles 50-52 of the CRD, is to provide the competent authorities with a set of criteria and procedure for precise, due diligent and prudent supervision of the significant branches. By establishing a common framework for the competent authorities, these guidelines are further expected to reinforce cooperation between home and host competent authorities when needed and harmonise different practices across EU member states.
9. As a result, the specific objectives of the guidelines are to:
 - extend the regulatory assessment criteria to further differentiate significant cross-border branches by their level of significance, e.g. 'significant-plus';
 - identify common procedures in the supervision of ('significant-plus') branches;
 - identify common procedures for and strengthen the cooperation of home and host competent authorities in the supervision of the significant branches depending on their level of significance.
10. The general objectives of the guidelines are to:
 - Ensure accurate significance assessment and risk assessment of the cross-border branches,
 - Provide prudent and risk-based supervision of the significant branches to avoid potential impact of financial dysfunction with a significant cross-border element.

C. Baseline scenario

11. Currently, there are more than 800 branches of EEA countries located in a Member States other than that in which their head offices are located. Approximately, 4% of the branches or 29 branches are assessed to be significant in accordance with the CRD criteria and therefore, are expected to fall under the scope of these guidelines.¹⁴

12. Article 51(1) of the CRD sets the minimum of three criteria for the competent authorities to identify significant branches. Some competent authorities apply additional criteria for the identification of significant branches and/or for further classification of the significant branches according to their level of significance. The Table 1 presents a summary of the current practices in terms of the benchmark assessment criteria proposed under the current guidelines for 'intensification test' (Section 4.2 of the guidelines).

Table 1 Current practices used across Member States on the criteria for the identification of significant branches (Y = Yes, N = No, P = Partially)

	Provision of CFs	No. of transactional accounts	O-SII indicators/scores	Asset size of a share of GDP	Assets size and market share	Share of TREA
ECB (direct supervision)	No	No	No	No	No	No
AT	No	No	No	No	No	No
BE	No	No	No	No	No	No
BG	No	No	No	No	Yes	No
CY	Yes	Yes	No	Partially	Yes	No
CZ	No	No	Partially	No	No	No
DE	No	No	No	No	No	No
DK	No	No	Partially	No	Yes	No
EE	No	No	No	No	No	No
EL	No	No	No	No	No	No
ES	No	Yes	No	No	Yes	No
FI	Yes	Yes	No	No	Partially	No
FR	No	No	No	No	Yes	No
HR	Yes	Yes	No	No	Yes	No
HU	No	No	No	Yes	Yes	No
IE	Yes	No	Yes	Yes	Yes	Partially
IT	Yes	No	Yes	Yes	Yes	Yes
IS	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
LI						
LT	No	No	No	No	No	No

¹⁴ All branches of the EU Member States located in Member States other than that in which their head offices are situated fall under the scope of the initial significance assessment under Article 51 of the CRD however only a subset of these branches, i.e. those that are assessed to be significant fall under the scope of the current Guidelines.



LU	No	No	No	No	No	No
LV						
MT	No	No	No	No	No	No
NL	No	No	No	No	No	No
NO	Yes	Yes	No	No	Yes	No
PL	Partially	Yes	Yes	Partially	Yes	Partially
PT	Yes	No	No	Yes	Yes	No
RO	No	Yes	Yes	No	Yes	No
SE	Yes	Partially	No	No	Yes	No
SI	No	No	No	No	No	No
SK	No	No	No	No	Yes	No
UK	Yes	Yes	No	Partially	Partially	Partially

13. Current practices indicates (i) the extent to which competent authorities rely on further criteria for the significance assessment of branches in addition to the criteria indicated under Article 51(1), (ii) variations in the implementation of Article 51(1) of the CRD across Member States, i.e. that the competent authorities use additional indicators, and iii) potential further efforts that the competent authorities and financial institutions need to make in order to comply with the current guidelines.¹⁵

14. Furthermore, some Member States currently use procedures and carry out further risk assessment on significant branches, when deemed necessary. Whether the implementation of such procedures and methods exist or not and when implemented, their form are treated on an individual basis and vary significantly across Member States, e.g. an EU branch of a significantly important financial institution may be subject strict additional risk assessment while an EU branch of another significantly important financial institutions with the same risk profile may not be subject to additional risk assessment at all.

D. Options considered

15. This section presents the major points discussed during the preparation of the draft guidelines. Next section, in turn, discusses the advantages and disadvantages as well as potential costs and benefits of the options.

Scope of the intensification test

Option 1a: the intensification test to cover all branches

¹⁵ Here the following reasoning applies: if the current practice of a competent authority already incorporates all of the criteria indicated in the current guidelines then further cost of compliance with the guidelines for the intensification test is negligible. On the other hand, if the current practice of the competent authority is limited to the minimum criteria under Article 51(1) then the cost of compliance with the guidelines for this competent authority is expected to be higher.



Option 1b: the intensification test to cover significant branches only

Assessment of the intensification test

Option 2a: list of assessment criteria in an order of importance

Option 2b: list of assessment criteria subject to the agreement of home and host supervisors

Branch risk assessment

Option 3a: separate risk assessment for significant-plus branches

Option 3b: no separate risk assessment for significant-plus branches

On the spot checks and inspections

Option 4a: explicit requirement on cooperation between home and host competent authorities

Option 4b: leaving to the discretion of competent authorities

Communication with the institution

Option 5a: explicit requirement on the frequency of joint meetings with the branch management

Option 5b: no explicit requirement on the frequency of joint meetings with the branch management

E. Assessment of the options and the preferred option(s)

Scope of the intensification test

16. One of the key elements of the current guidelines is the intensification test (see Section 4.2 of the guidelines). For the intensification test the drafting team assessed the scope of the test. In other words, whether all branches should be subject to intensification test regardless of the outcome of the significance assessment under Article 51(1) of the CRD (Option 1a) or the competent authorities should apply the intensification test only if branches are assessed to be significant under Article 51(1), i.e. a sub-set of significant branches.

17. Under Option 1a, as a starting point all competent authorities apply the intensification test to all branches with the idea of identifying not only the significant-plus ones but also the non-significant branches but important for the group. In this case, if a branch is significant following the assessment under Article 5(1) and then assessed to be significant-plus after the intensification test then this branch will be subject to more intensive supervision in terms of home and host authorities cooperation. Yet, if the branch is not significant following the assessment under Article 51(1) but may be well considered under the intensification test due to its importance to the group or institution then this branch is considered to be non-



significant but important for the group. In this case, the supervision will not necessarily require a joint supervision.

18. On the other hand, under Option 1b, the competent authorities will apply the intensification test if the branches are classified as significant under Article 51(1) and will exclude non-significant branches.

19. The options are expected to generate further costs for the competent authorities. More precisely, the authorities that do not currently apply the criteria that are proposed under the guidelines for the intensification test would need to carry out additional assessments on branches (see baseline scenario and Table 1). Under Option 1a the expected cost for the authorities is higher since the scope of the intensification test is larger. On the other hand, the additional benefit of the intensification test on non-significant institutions is not justified.

20. Furthermore, if the intensification test covers all branches then the guidelines should also define the categories for branches other than those which are classified under significant-plus¹⁶. This may create complexity to the supervisory framework.

21. From the institutions' perspective, when a branch is categorised as significant-plus it will be subject to further risk assessment that will require a more intensified cooperation between home and host competent authorities and eventually may lead to an introduction of more granularity into reporting. The cost associated with reporting due to the classification of a branch as significant-plus is expected to increase the administrative burden for the branch. However, Option 1b limits this increase in cost to a sub-set of significant branches only. By the same token, this marginal increase in cost is justified as the expected benefits in terms of prudential regulation are expected to exceed the costs.

22. Therefore, following this reasoning the preferred option is Option 1b.

Assessment of the intensification test

23. The consideration of this option is regarding the scope and criteria of the assessment as well as the structure of the coordination between home and host competent authorities. Option 2a proposes that the criteria to be considered by the competent authorities while performing the intensification test in an order of importance, i.e. starting from the most important criteria e.g. CEFs, and also to categorise them based on the competences of the supervisory authorities. For example, home competent authority is expected to be in a better position to assess criteria that cover the importance of the branch for the institution or for the group, e.g. CEFs, branch's assets as a percentage share of total assets, branch's TREA as a percentage share of institution's TREA, while host competent authority should be in a better position to assess criteria that touch upon the significance of the branch for the host Member State, e.g. CEFs,

¹⁶ For example, significant, significant+, non-significant but important for the group, non-significant and non-important for the group.



branch's assets as a percentage share of GDP in the host Member State, O-SII indicators/scores.

24. On the other hand, Option 2b envisages that both home and host competent authorities assess and then agree on a set of criteria for the intensification test. This option was dropped as it would potentially give rise to cases of disagreement or may not reflect the responsibilities and competences of the respective authorities, e.g. home competent authority knows the supervised institution, it is responsible for its prudential supervision, while host competent authority knows the local market and can assess possible impact of the branch of this institution locally.

25. Neither option would have an impact on the institutions.

26. Option 2a is chosen as the preferred option as it is expected to introduce a more structured platform for the coordination of the competent authorities and reduce cost of coordination in prudential supervision.

Branch risk assessment

27. The current regulatory framework is silent to the risk assessment of branches. In practice, under colleges the host supervisors prepare branch risk assessment within the SREP report, now the so-called branch risk assessment.

28. In terms of branch risk assessment, the drafting team considered two main policy options: Option 3a introduces the idea of the branch risk assessment, which up to now was not foreseen in the Level 1 and Level 2 text and proposes the continuation of the current practices, and Option 3b requires explicitly the development of the branch risk assessment under the responsibility of the home supervisory and with the inputs from the host competent authority.

29. Option 3a is the status quo. Option 3b in practice introduces for significant-plus branches a separate branch risk assessment, which will be annexed to the SREP report of the institution, and that branch risk assessment will be developed by the home with contribution from host authority, unless the former decides to delegate the task to the latter.

30. Option 3a does not accurately reflect the competences and responsibilities of the home and host Member States by recognising and exploiting the specific knowledge of the home and host supervisors. On the other hand, Option 3b explicitly clarifies the allocation of resources and competence-based inputs for the risk assessment, e.g. risks that the branch poses to the financial stability of the host Member State, conduct risk etc. The marginal cost of Option 3b is expected to be negligible and the marginal benefit is expected to be positive. As a result, the preferred option is Option 3b. Note that neither option would have an impact on the institutions as they would be subject to the 'same' supervisory treatment under either option.

On the spot checks and inspections



31. One of the main policy point options that the guidelines include is regarding the structure of the cooperation between home and host competent authorities for the spot checks and inspections. Precisely, this is related to the initiation of the activity and the exchange of information for the activity.
32. Option 4a introduces an explicit requirement on cooperation between home and host competent authorities. Under this option either authority can initiate the process and have the obligation to invite the other supervisor to participate. Furthermore, in the invitation the authority should inform the other authority about the planned activity. Particularly, the current draft guidelines further indicate that the invitation needs to be sent in advance, i.e. at least six weeks before the start of the activity, needs to include information on the scope of the activity so the invited authority can make an informed decision on their participation, the initiator needs to consult the participating authority on the outcome of the activity i.e. report with the findings of the on the spot check and inspection before sending the report to the institution.
33. Option 4b, the alternative option, does not get into the level of detail that Option 4a does and leaves the competent authorities to make arrangements on a case by case basis. This option was dropped since it does not address the organisations concerns and potential gaps in the cooperation as identified under problem definition. More precisely, it fails to structure and facilitate appropriately the cooperation between the home and host competent authorities leaving large of room for potential disagreements and conflicts and diminishing the possibility of joint on the spot checks or inspections. Neither policy option would have cost impact on the institutions. The competent authorities should dedicate time and resources for further cooperation between themselves but this further cost is expected to be small. The net benefit of the option 4a is expected to be positive hence it is chosen as the preferred option.

Communication with the institution

34. The Option 5a introduces provisions on joint meetings with the branch management and the minimum frequency of these joint meetings, i.e. at least annually. Alternative Option 5b proposes that these meetings should be under the control of the host authority with the possibility that the host authority inviting the home authority. This option was also supported by most of the host authorities however, the EBA believes that explicit provisions on joint meetings reflect a more balanced and more transparent process and, reflect more accurately the supervisory competences and responsibilities of home and host authorities. Option 5a is the preferred option.

5.2 Overview of questions for consultation

1. What are the respondents' views on the overall approach to the organisation of supervision of the subset of significant branches with particular importance to the group or institution or to the financial stability in the host Member State (significant-plus branches)?
2. What are the respondents' views on the approach to and the criteria used for the identification of significant-plus branches (intensification test)?
3. What are the respondents' views on the determination of significance plus of the branch using the methodology for the identification of O-SII and whether such assessment can be meaningfully performed based on the data available to the host competent authorities?
4. What are the respondents' views on the proposed approach to introducing branch risk assessment to be performed for significant-plus branches as part of SREP (section 5.1)?
5. What are the respondents' views on the proposed approach to the collection and exchange of information needed for the supervision of significant-plus branches (Section 5.4)?
6. What are the respondents' views on the proposed approach to the communication framework for a significant-plus branch, including communication with an institution and the branch (Section 5.6)?
7. What are the respondents' views to the proposed approach to the cooperation between the consolidating supervisors, home and host competent authorities for the purposes of the assessment of recovery plans (Section 5.7)?