

EBA FINAL draft implementing technical standards

on joint decisions on institution-specific prudential requirements under Article 113 of Directive 2013/36/EU



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1. Executive Summary

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 ('the CDR') mandates the European Banking Authority (EBA) to develop draft implementing technical standards on joint decisions on institution-specific prudential requirements in order to ensure uniform conditions of application of the joint decision process with regard to the application of Articles 73, 86, 97, and Articles 104(1)(a) and 105 with a view to facilitating joint decisions.

According to the CRD, the consolidating supervisor and the competent authorities responsible for the supervision of EU subsidiaries in a Member State must do everything within their power to reach joint decisions on:

- i) the application of Articles 73 and 97 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104(1)(a) to each institution within the group of institutions and on consolidated level (*capital joint decision*); and
- ii) measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and treatment of risks as required pursuant to Article 86 and relating to the need for institution specific liquidity requirements in accordance with Article 105 (*liquidity joint decision*).

These draft implementing technical standards specify the process to be followed by the consolidating supervisor and the relevant competent authorities in the context of reaching such joint decisions, addressing such aspects as:

- Planning of the joint decision process, which is recognised to be an essential element of a successful process for the reaching of timely joint decisions;
- Contributions to the draft group risk assessment report, which are to be communicated to the consolidating supervisor in a consistent and uniform manner, through the use of common templates which will report the results of the institution-specific supervisory review and evaluation processes;
- Discussion and finalisation of the group risk assessment report, where the contributions from relevant competent authorities must be included as annexes, providing direct evidential support to the assessment of the group and its institutions;
- Contributions to, and preparation of, the draft joint decision document, where relevant competent authorities submit their proposals to the joint decision concerning the institutions within their jurisdiction;
- Elaboration of the joint decision document from the consolidating supervisor in a form that ensures that the joint decision is set out in a document containing a fully reasoned joint decision;

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- Discussion of, and reaching of agreement on, the joint decision document, with provisions requiring the agreement to be evidenced in writing by appropriate representatives of the competent authorities;
 - Communication of the joint decision to the group, with clear provisions covering communication to the parent of the group and its individual institutions;
 - Monitoring of the application of the joint decision, in cases where actions are expected from the institution(s) in order to comply with the outcome of the joint decision;
 - Processes to be followed in the absence of any joint decision, in order to ensure that decisions taken in the absence of a joint decision are shared between the consolidating supervisor and the relevant competent authorities and communicated to the group as a single document;
 - Annual and exceptional updates of joint decisions, with provisions reflecting the urgency of the update and the appropriate involvement of relevant competent authorities;

In addition, the consolidating supervisor and relevant competent authorities are required to consider the possible involvement of third country supervisors, subject to their agreement, in the process of developing and discussing the group risk assessment report given the importance of ensuring a complete assessment of the financial condition and risk profile of all institutions – including non-EEA institutions – of the group.

For the finalisation of this draft ITS, the EBA considered the responses submitted to the relevant consultation paper (EBA/CP/2013/10).

2. Background and rationale

These draft implementing technical standards ensure uniform conditions of application of the joint decision process for institution-specific prudential requirements with a view to facilitating joint decisions. They establish common procedures and templates to be used for the purpose of reaching effective joint decisions - on capital and liquidity - between the consolidating supervisor and the competent authorities responsible for the supervision of EU subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in a Member State.

The draft implementing technical standards establish important procedures that will facilitate the interaction and cooperation between the consolidating supervisor and the relevant competent authorities whilst in the process of performing their respective assessments and contributions to the group risk assessment and joint decision documents. Templates to be used by the consolidating supervisor and the relevant competent authorities while exchanging information for the purposes of developing a group risk – liquidity risk – assessment report and reaching capital and liquidity joint decisions are included as annexes to these draft implementing technical standards.

Specific aspects of these draft technical standards – namely, the joint decision on capital - build to some extent on EBA Guidelines for the joint assessment and joint decision regarding the capital adequacy of cross-border groups (December 2010). However, additional requirements arising from the CRD are reflected in these technical standards, and in particular requirements covering the reaching of liquidity joint decision under Pillar 2.

3. EBA FINAL draft implementing technical standards on joint decisions on institution-specific prudential requirements under Article 113 of Directive 2013/36/EU

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laying down implementing technical standards to ensure uniform conditions of application of the joint decision process for institution-specific prudential requirements with regard to the application of Articles 73, 86 and 97, point (a) of Article 104(1) and Article 105 of Directive 2013/36/EU of the European Parliament and of the Council

(text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment institutions and amending Regulation (EU) No 648/2012¹, and in particular Article 113(5) thereof,

Whereas:

- (1) Efficient exchange of appropriate information is essential for the provision of an effective process for the reaching of a joint decision on the adequacy of own funds, required level of own funds held by the group and on institution-specific liquidity requirements.
- (2) In order to ensure a consistent application of the process for the reaching of a joint decision, it is important that each step is well defined. A clear process also facilitates exchange of information, promotes mutual understanding, develops relationships between supervisory authorities and promotes effective supervision.
- (3) In order to perform the risk assessment of the group of institutions and the assessment of the liquidity risk profile of the group, the consolidating supervisor should have an overview of the activities of all of the institutions within the group, including institutions operating outside the Union. Interaction between Union competent authorities and third country supervisors should therefore be promoted in order to enable the former to assess the global risks faced by the group.
- (4) Timely and realistic planning for the joint decision process is essential. Every competent authority involved should provide the consolidating supervisor with relevant information on a timely basis. In order for individual assessments to be presented and interpreted in a consistent and uniform manner, it is necessary to introduce a common template for the results of the institution-specific supervisory review and evaluation processes.

¹ OJ L 176, 27.6.2013, p.1.

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- (5) To ensure uniform condition of application, the steps to be followed for the performance of the joint risk assessment and the reaching of the joint decision should be established, recognising that some tasks of the joint risk assessment and joint decision process may be performed in parallel and others sequentially.
 - (6) The consolidating supervisor should provide the competent authorities involved with all relevant information necessary for the preparation of their individual risk assessment as well as for enabling the reaching of the joint decision on the adequacy of own funds at a consolidated level and on institution-specific liquidity requirements.
 - (7) The report containing the risk assessment of the group is a core document for competent authorities to use in order to understand, assess and record the assessment of the overall risk profile of the banking group for the purpose of reaching a joint decision on the adequacy of own funds and required level of own funds held by the group. The report containing the assessment of the liquidity risk profile of the group of institutions is an important document for competent authorities to use in order to understand, assess and record the assessment of the overall liquidity profile and liquidity assessment of the group. In order to present the overall risk assessment and liquidity risk assessment of the group in a consistent manner and therefore support meaningful discussions among competent authorities and the robust assessment of cross border banking group risks, common templates for these reports should be established.
 - (8) Whilst recognising that outcomes of the supervisory review and evaluation process specified in Article 97 of Directive 2013/36/EU may be documented differently across the Member States depending on the implementation of the said Article in the national legislation taking also into account guidelines issued by the EBA under Article 107(2) of Directive 2013/36/EU, standard templates should provide consistent formats for the communication of findings and outcomes of the supervisory review process for the purposes of reaching joint decisions on institution-specific prudential requirements.
 - (9) Neither the group risk assessment report nor the report containing the group liquidity risk assessment should be limited to an aggregation of individual competent authority assessments, but they should be used as a tool supporting the performance of the joint assessment of the risk and liquidity profiles of the whole group, elaborating on aspects concerning the interaction of intra-group items.
 - (10) Establishing clear processes for the content and articulation of the joint decision, in a document, should ensure that it is fully reasoned as well as facilitate monitoring of the joint decision and enforcement in cases of non-compliance.
 - (11) In order to clarify the process to be followed once the joint decision is reached, provide transparency on the treatment of the outcome of the decision and facilitate appropriate follow-up action where needed, standards regarding the communication of the fully reasoned joint decision and the monitoring of its implementation should be established.
 - (12) The process to be followed for updates of joint decision should be established in order to ensure a consistent and transparent approach, as well as appropriate involvement of competent authorities and communication of the outcome.
 - (13) The joint decision process under Article 113 of Directive 2013/36/EU includes the process to be followed where no joint decision is reached. To ensure uniform conditions of application on this aspect of the process and in particular ensure the

articulation of fully reasoned decisions and clarify the treatment of any views and reservations expressed by host supervisors, standards should be established covering the timeline for taking decisions in the absence of a joint decision, and the communication of the details of such decisions.

- (14) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the European Commission;
- (15) The EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010;

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and definitions

Article 1 *Subject matter*

This Regulation specifies the joint decision processes referred to in Article 113 of Directive 2013/36/EU as regards the following:

- (a) the application of Articles 73 and 97 of that Directive to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of point (a) of Article 104(1) of that Directive to each institution within the group of institutions, taking account of any waiver granted pursuant to Article 7, Article 10 or Article 15 of Regulation (EU) No 575/2013 of the European Parliament and of the Council², and on a consolidated basis;
- (b) measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the Directive 2013/36/EU and relating to the need for institution-specific liquidity requirements, taking account of any waiver granted pursuant to Article 8 or Article 10 of Regulation (EU) No 575/2013, and of any consolidated level of application pursuant to Article 11(3) of that Regulation, in accordance with Article 105 of that Directive.

Article 2 *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘relevant competent authorities’ means competent authorities responsible for the supervision of subsidiaries of an EU parent institution, of an EU parent financial holding company or of an EU mixed financial holding company in a Member State;

² 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).

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- (2) ‘other competent authorities’ means competent authorities other than relevant competent authorities and other Member State authorities responsible for supervising regulated institutions within the group which the consolidating supervisor involves in the group risk assessment;
 - (3) ‘joint decision timetable’ means the timetable referred to in Article 4;
 - (4) ‘supervisory review and evaluation process report’ or ‘SREP report’ means the report presenting the outcome of the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU;
 - (5) ‘liquidity risk assessment report’ means the report presenting the outcome of the part of the supervisory review and evaluation process referred to in Article 97 of Directive 2013/36/EU, as regards liquidity risks;
 - (6) ‘group risk assessment report’ means the report containing the risk assessment of the group of institutions referred to in point (a) of Article 113(2) of Directive 2013/36/EU;
 - (7) ‘group liquidity risk assessment report’ means the report containing the assessment of the liquidity risk profile of the group of institutions referred to in point (b) of Article 113(2) of Directive 2013/36/EU;
 - (8) ‘capital joint decision’ means the joint decision on the matters referred to in point (a) of Article 1;
 - (9) ‘liquidity joint decision’ means the joint decision on the matters referred to in point (b) of Article 1;
 - (10) ‘extraordinary update’ means an update, in exceptional circumstances, of the joint decision or of any decision taken in the absence of a joint decision pursuant to paragraphs (1) or (4) of Article 113 of Directive 2013/36/EU.

CHAPTER II

SECTION I

JOINT DECISION PROCESS

Article 3

Involvement of other competent authorities and competent authorities of third countries

1. The consolidating supervisor may, in order to produce the group risk assessment report or group liquidity risk assessment report, involve other competent authorities and competent authorities of third countries, where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities members of the college, to the requirements under Section II of Chapter 1 of Title V of Directive 2013/36/EU and where applicable, Articles 54 and 58 of Directive 2004/39/EC of the European Parliament and of the Council³, and based on

³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

the relevance of the branch or institution within the group and its significance for the local market.

2. The scope of involvement of other competent authorities and competent authorities of third countries in accordance with paragraph 1 shall be agreed by the consolidating supervisor and the other competent authorities or competent authorities of third countries concerned for the following purposes:
 - (a) providing contributions to the group risk assessment and group liquidity risk assessment reports;
 - (b) including contributions from other competent authorities or competent authorities of third countries in the draft and final group risk assessment and group liquidity risk assessment reports as annexes.
3. The scope of involvement of other competent authorities and competent authorities of third countries in accordance with paragraph 1 shall be agreed by the consolidating supervisor and the relevant competent authorities for the purpose of sharing the draft and final group risk assessment reports and group liquidity risk assessment reports with other competent authorities and competent authorities of third countries.
4. The consolidating supervisor shall keep the relevant competent authorities fully informed on the scope, level and nature of involvement of other competent authorities and competent authorities of third countries in the group risk assessment process and the extent to which the group risk assessment report has benefited from their input.

Article 4

Planning of the joint decision process

1. The consolidating supervisor and the relevant competent authorities shall agree before the start of the joint decision process on a timetable of steps to be followed in the joint decision process. In the case of disagreement, the consolidating supervisor shall set the timetable after considering the views and reservations expressed by the relevant competent authorities.
2. The joint decision timetable shall be updated at least annually and shall include the following steps:
 - (a) agreement on the involvement of other competent authorities and competent authorities of third countries pursuant to Article 3;
 - (b) submission of SREP reports and liquidity risk assessment reports from relevant competent authorities and contributions from other competent authorities and competent authorities of third countries pursuant to Article 3(2) and Article 5;
 - (c) submission of the draft group risk assessment report and draft group liquidity risk assessment report from the consolidating supervisor to relevant competent authorities, other competent authorities and competent authorities of third countries pursuant to Article 3(3), and Article 6(6) and (7);
 - (d) dialogue between the consolidating supervisor and relevant competent authorities, on the draft group risk assessment report and draft group liquidity risk assessment report pursuant to Article 7;

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- (e) submission of the group risk assessment report and group liquidity risk assessment report from the consolidating supervisor to the relevant competent authorities, other competent authorities and competent authorities of third countries pursuant to Article 3(3), and Article 8(2) and (5);
 - (f) submission to the consolidating supervisor of contributions from relevant competent authorities to the draft capital joint decision and to the draft liquidity joint decision pursuant to Article 9(1);
 - (g) submission of the draft capital joint decision document and draft liquidity joint decision document from the consolidating supervisor to the relevant competent authorities pursuant to Article 10(6) and Article 11(5);
 - (h) consultation on the draft capital joint decision and draft liquidity joint decision documents with the EU parent institution and its institutions, where required by the legislation of a Member State;
 - (i) dialogue between the consolidating supervisor and relevant competent authorities on the draft capital joint decision and the draft liquidity joint decision;
 - (j) reaching the capital joint decision and the liquidity joint decision pursuant to Article 12;
 - (k) communication of the capital joint decision and liquidity joint decision pursuant to Article 13;
 - (l) agreement on the following year's timetable for the planning of the joint decision process.
3. The timetable shall:
 - (a) reflect the scope and complexity of each task, taking account the size, systemic importance, nature, scale and complexity of the activities of the group to which the joint decision relates, as well as its risk-profile;
 - (b) take account, so far as possible, of the commitments of the consolidating supervisor and the relevant competent authorities under the supervisory examination programme referred to in point (c) of the third subparagraph of Article 116(1) of Directive 2013/36/EU;
 - (c) be reviewed, if appropriate, in particular to reflect the urgency of any extraordinary update undertaken pursuant to Articles 20 and 21.
 4. The following aspects of the timetable shall be communicated from the consolidating supervisor to the parent institution and from the relevant competent authorities to the respective institutions under their jurisdiction:
 - (a) an indicative date for the consultation with the respective institutions on the relevant aspects of draft joint decision document, where such consultation is required by the legislation of a Member State;
 - (b) an estimated date for communicating the joint decision document.

Article 5
Individual contributions

1. In order to facilitate due consideration of the risk assessment of subsidiaries in the joint decision in accordance with Article 113(2) of Directive 2013/36/EU, the relevant competent authorities shall provide the consolidating supervisor with their SREP reports and liquidity risk assessment reports in a timely manner and in any event by the deadline specified in the joint decision timetable.
2. The SREP reports and liquidity risk assessment reports shall be prepared using the templates in Annex 1 and Annex 2, and templates in Annex 5 and Annex 6 respectively. The reports may include additional relevant information.

Article 6
Preparation of the draft group risk assessment report and draft group liquidity risk assessment report

1. The consolidating supervisor shall prepare a draft group risk assessment report and draft group liquidity risk assessment report based on each of the following:
 - (a) its own SREP report or liquidity risk assessment report on the EU parent institution and the group;
 - (b) the SREP reports or liquidity risk assessment reports on subsidiaries provided by the relevant competent authorities;
 - (c) contributions from other competent authorities and competent authorities of third countries, pursuant to Article 3(2).
2. The SREP reports or liquidity risk assessment reports referred to in points (a) and (b) of paragraph 1 together with relevant contributions from other competent authorities and competent authorities of third countries pursuant to Article 3(2) shall be included in the draft group risk assessment report or draft group liquidity risk assessment report as annexes.
3. The draft group risk assessment report and draft group liquidity risk assessment report shall contain the results of the assessment of whether the arrangements, strategies, processes and mechanisms implemented by the group and its institutions and the own funds and liquidity held by these ensure a sound management and coverage of their risks.
4. The draft group risk assessment report and draft group liquidity risk assessment report shall be prepared using the templates in Annexes 3 and 4, and templates in Annexes 7 and 8 respectively.
5. The consolidating supervisor shall, in accordance with the principle of proportionality, reflect in the joint assessment the relevance of the institutions within the group and their significance in the local market and shall indicate in the draft reports how these criteria were taken into account.
6. The consolidating supervisor shall provide the draft reports to the relevant competent authorities on a timely basis for the purposes of the dialogue and in any event by the deadline specified in the joint decision timetable.

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7. Subject to the decision referred to in Article 3(3), the consolidating supervisor may provide the draft reports to the other competent authorities and the competent authorities of third countries.

Article 7

Dialogue on the draft group risk assessment report and draft group liquidity risk assessment report

1. The consolidating supervisor shall decide on the form and scope of the dialogue with the relevant competent authorities on the draft group risk assessment report and draft group liquidity risk assessment report.
2. The consolidating supervisor shall, as part of the dialogue, ensure discussion of the reconciliation of the quantitative proposals in individual contributions included in the SREP reports and liquidity risk assessment reports with the quantitative proposals included in the draft group risk assessment report and draft group liquidity risk assessment report, as applicable, at least as regards the following matters:
 - (a) the proposed level of own funds that the institutions are, in accordance with point (a) of Article 104(1) of Directive 2013/36/EU, required to hold in excess of the requirements set out in Chapter 4 of Title VII of that Directive and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation, and the proposed level of own funds that the group is, in accordance with point (a) of Article 104(1) of Directive 2013/36/EU, required to hold on consolidated level, in excess of the requirements set out in Chapter 4 of Title VII of that Directive and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
 - (b) the proposed quantitative specific liquidity measures, pursuant to Article 105 of Directive 2013/36/EU, for individual institutions and the proposed quantitative specific liquidity measures at the consolidated level.

Article 8

Finalisation of the group risk assessment report and the group liquidity risk assessment report

1. Based on the dialogue referred to in Article 7, the consolidating supervisor shall finalise the group risk assessment report and group liquidity risk assessment report based on the format and content of the draft reports, explaining any material changes. Changes shall reflect the outcome of the dialogue and shall include appropriate updates to the annexes of the group risk assessment report and group liquidity risk assessment report.
2. The consolidating supervisor shall provide the group risk assessment report and group liquidity risk assessment report to the relevant competent authorities in a timely manner and in any event by the deadline specified in the joint decision timetable.
3. In accordance with point (a) of Article 113(2) of Directive 2013/36/EU the submission of the group risk assessment report to the relevant competent authorities shall trigger the start of the four month period for reaching the capital joint decision.

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4. In accordance with point (b) of Article 113(2) of Directive 2013/36/EU the submission of the group liquidity risk assessment report to the relevant competent authorities shall trigger the start of the one month period for reaching the liquidity joint decision.
 5. Subject to the agreement referred to in Article 3(3), the consolidating supervisor may provide the group risk assessment report and the group liquidity risk assessment report to the other competent authorities and the competent authorities of third countries.

Article 9

Contributions to the draft capital joint decision and draft liquidity joint decision

1. The relevant competent authorities shall provide their contributions to the draft capital joint decision and the draft liquidity joint decision to the consolidating supervisor in a timely manner and in any event by the deadline specified in the joint decision timetable. Contributions shall cover all of the institutions within the group of institutions falling within the scope of the joint decision.
2. The consolidating supervisor shall contribute to the draft capital joint decision on both of the following bases:
 - (a) in relation to all of the institutions within the group in its own jurisdiction falling within the scope of the joint decision process;
 - (b) in relation to the consolidated level.
3. The consolidating supervisor shall contribute to the draft liquidity joint decision on both of the following bases:
 - (a) in relation to all of the institutions within the group in its own jurisdiction falling within the scope of the joint decision process;
 - (b) in relation to the group of institutions.
4. Contributions to the draft capital joint decision shall set out each of the items referred to in Article 10.
5. Contributions to the draft liquidity joint decision shall set out each of the items referred to in Article 11.

Article 10

Drafting the capital joint decision

1. The consolidating supervisor shall prepare a fully reasoned draft capital joint decision covering the group and its institutions which sets out each of the following items:
 - (a) the names of the consolidating supervisor and the relevant competent authorities reaching the capital joint decision;
 - (b) the name of the group of institutions and a list of all institutions within the group to which the capital joint decision relates and applies;
 - (c) the references to the applicable Union and national law relating to the preparation, finalisation and application of the capital joint decision;

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- (d) the date of the capital joint decision and of any relevant update thereto;
 - (e) the conclusion on the application of Articles 73 and 97 of Directive 2013/36/EU;
 - (f) the conclusion on the adequacy of the consolidated level of own funds held by the group of institutions;
 - (g) the conclusion on the adequacy of own funds held by each institution within the group;
 - (h) the conclusion on the required level of own funds that each institution within the group is, in accordance with point (a) of Article 104(1) of Directive 2013/36/EU, required to hold in excess of the requirements set out in Chapter 4 of Title VII of this Directive and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
 - (i) the conclusion on the required level of own funds that the group of institutions is, in accordance with point (a) of Article 104(1), required to hold on consolidated basis in excess of the requirements set out in Chapter 4 of Title VII of Directive 2013/36/EU and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
 - (j) information on the minimum prudential requirements which apply to each institution pursuant to Article 92 of Regulation (EU) No 575/2013 and Articles 103, 128, 129, 130, 133 of Directive 2013/36/EU and on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings;
 - (k) the reference date to which the conclusions in subparagraphs (e) to (i) relate;
 - (l) the timeline for the implementation of the conclusions in subparagraphs (h) and (i), where applicable.

2. The conclusion referred to in point (e) of paragraph 1 shall set out each of the following items:

- (a) the assessment of whether the institution has in place sound, effective and complete strategies and processes to assess, maintain and distribute internal capital and whether such strategies and processes are up to date;
- (b) the assessment of whether the amounts, types and distribution of such internal capital is adequate to cover the nature and level of risks to which the institution is exposed or might be exposed;
- (c) the assessment of whether an institution has implemented appropriate arrangements, strategies, processes and mechanisms to comply with Directive 2013/36/EU and Regulation (EU) No 575/2013 and related requirements;
- (d) the assessment of whether the arrangements, strategies, processes and mechanisms implemented by an institution ensure a sound management and coverage of its risks;
- (e) information on the application of supervisory measures and powers pursuant to Article 102 and points (b) to (l) of Article 104(1) of Directive 2013/36/EU to address deficiencies identified under points (a) to (d).

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3. The conclusions on the adequacy of own funds at the consolidated and institution level referred to in points (f) and (g) of paragraph 1 shall refer to and be supported by the conclusion referred to in point (e) of paragraph 1.
 4. The conclusions on the required level of own funds referred to in points (h) and (i) of paragraph 1 shall meet each of the following requirements:
 - (a) they shall be expressed in respect of each institution within the group;
 - (b) they shall be expressed on a consolidated basis;
 - (c) they shall be formulated as an amount or a ratio or a combination of both, providing details of the quality of additional own funds required;
 - (d) they shall be linked to and supported by the statement referred to in point (e) of paragraph 1.
 5. The draft joint decision document shall be presented in such a way that conclusion is clearly identifiable in respect of each institution within the group of institutions and at the consolidated level.
 6. The consolidating supervisor shall provide the draft capital joint decision document to the relevant competent authorities in a timely manner and in any event by the deadline specified in the joint decision timetable for the purposes of the dialogue referred to in point (i) of Article 4(2).

Article 11

Drafting the liquidity joint decision

1. The consolidating supervisor shall prepare a fully reasoned draft liquidity joint decision which sets out each of the following items:
 - (a) the names of the consolidating supervisor and the relevant competent authorities reaching the liquidity joint decision;
 - (b) the name of the group of institutions and a list of all institutions within the group to which the liquidity joint decision relates and applies;
 - (c) the references to applicable Union and national law relating to the preparation, finalisation and application of the liquidity joint decision;
 - (d) the date of the liquidity joint decision and of any relevant update thereto;
 - (e) the conclusion on the liquidity adequacy for each institution and for the group;
 - (f) the conclusion on any measures taken to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of Directive 2013/36/EU and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of that Directive for each institution and for the group;
 - (g) the information on other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings;
 - (h) the reference date to which the conclusions referred to in points (e) and (f) relate;

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- (i) the timeline for the implementation of the conclusions referred to in points (e) and (f), where applicable.
 2. The conclusion referred to in point (e) of paragraph 1 shall cover all institutions within the group and shall set out each of the following items:
 - (a) the assessment of whether the institution has implemented robust strategies, policies, processes and systems for the identification measurement, management and monitoring of liquidity risk over an appropriate set of time horizons;
 - (b) the assessment of whether the liquidity held by the institutions and at group level provides sufficient coverage of liquidity risks;
 - (c) the assessment of whether an institution has implemented appropriate arrangements, strategies, processes and mechanisms to comply with Directive 2013/36/EU and Regulation (EU) No 575/2013 and related requirements.
 3. The conclusion referred to in point (f) of paragraph 1 on any measures taken shall provide details on the nature of those measures. Where the measures relate to the need for institution-specific liquidity requirements in accordance with Article 105 of Directive 2013/36/EU, the conclusion shall meet each of the following requirements:
 - (a) it shall be expressed in respect of each institution within the group and in respect of the consolidated level;
 - (b) it shall provide details on the articulation of specific liquidity requirements.
 4. The draft liquidity joint decision document shall be presented in such a way that each conclusion is clearly identifiable in respect of each institution within the group of institutions and at the consolidated level.
 5. The consolidating supervisor shall provide the draft liquidity joint decision to the relevant competent authorities in a timely manner and in any event by the deadline specified in the joint decision timetable for the purposes of the dialogue referred to in point (i) of Article 4(2).

Article 12

Reaching the capital joint decision and liquidity joint decision

1. Following the dialogue with relevant competent authorities on the draft capital joint decision and draft liquidity joint decision referred to in point (i) of Article 4(2), the consolidating supervisor shall revise the draft capital joint decision and draft liquidity joint decision as necessary in order to finalise those decisions.
2. An agreement on the capital joint decision and liquidity joint decision shall be reached by the consolidating supervisor and all relevant competent authorities.
3. The agreement shall be evidenced in writing by representatives of the consolidating supervisor and relevant competent authorities with appropriate authority to commit their respective competent authorities.

Article 13

Communication of the capital joint decision and liquidity joint decision

1. The consolidating supervisor shall provide the capital joint decision document and liquidity joint decision document to the management body of the EU parent institution in a timely manner and in any event by the deadline specified in the joint decision timetable. The consolidating supervisor shall confirm this communication to the relevant competent authorities.
2. The respective relevant competent authorities shall provide to the management bodies of institutions within their jurisdiction to which the joint decisions apply the part of the capital joint decision document and liquidity joint decision document that is relevant for the respective institutions.
3. The consolidating supervisor shall, where appropriate, discuss the capital joint decision document and the liquidity joint decision document with the EU parent institution to explain the details of those decisions and their application.
4. The relevant competent authorities shall, where appropriate, discuss with the institutions within their jurisdiction, to which the joint decisions apply, the capital joint decision document and the liquidity joint decision document to explain the details of those decisions and their application.

Article 14

Monitoring the application of the capital joint decision and liquidity joint decision

1. The outcome of the discussion referred to in Article 13(3) held by the consolidating supervisor shall be communicated by the consolidating supervisor to the relevant competent authorities where an EU parent institution is required to take either of the following actions:
 - (a) to reach a required level of own funds as a result of the capital joint decision at parent institution or consolidated level;
 - (b) to address significant matters or material findings relating to liquidity supervision or to meet specific liquidity requirements pursuant to Article 105, as a result of the liquidity joint decision, at parent institution or consolidated level.
2. The outcome of the discussion referred to in Article 13(4) held by a relevant competent authority shall be communicated by that relevant competent authority to the consolidating supervisor where an institution within the group is required to take either of the following actions:
 - (a) to reach a required level of own funds as a result of the capital joint decision;
 - (b) to address significant matters or material findings relating to liquidity supervision or to meet specific liquidity requirements pursuant to Article 105 at an institution level as a result of the liquidity joint decision.
3. The consolidating supervisor shall forward this information to the other relevant competent authorities.
4. The application of the capital joint decision and liquidity joint decision shall, where relevant, be monitored by the consolidating supervisor and the relevant competent

authorities in relation to the institutions within the group for whose supervision they are responsible.

SECTION II

DISAGREEMENTS AND DECISIONS TAKEN IN THE ABSENCE OF JOINT DECISION

Article 15

Process in relation to decisions taken in the absence of joint decision

1. In the absence of a capital joint decision being reached within the time period referred to in Article 8(3) or a liquidity joint decision being reached within the time period referred to in Article 8(4), decisions in the absence of a joint decision in accordance with Article 113(3) of Directive 2013/36/EU shall be evidenced in writing and shall be taken by the later of the following dates:
 - (a) the date one month after the expiry of the time period referred to in Article 8(3) or (4), as applicable;
 - (b) the date one month after the provision of any advice by the EBA following a request for consultation in accordance with the third subparagraph of Article 113(2) of Directive 2013/36/EU;
 - (c) the date one month after any decision taken by the EBA in accordance with the first or second subparagraphs of Article 113(3) of Directive 2013/36/EU, or such other date as is set in such a decision.
2. Decisions taken on an individual or sub-consolidated basis in the absence of a joint decision shall be communicated by the relevant competent authorities to the consolidating supervisor. The consolidating supervisor shall include those decisions with the decision it takes at a consolidated and parent institution level in a single document and shall provide this document to all relevant competent authorities.
3. In any case where the EBA has been consulted, the document referred to in paragraph (2) shall include an explanation of any deviations from EBA advice.

Article 16

Drafting decisions taken in the absence of capital joint decision

1. Decisions taken in the absence of capital joint decision shall be set out in a document that contains each of the following items:
 - (a) the name of the competent authority taking the capital decision;
 - (b) the name of the institution or the group to which the decision relates and applies;
 - (c) references to applicable Union and national law relating to the preparation, finalisation and application of the capital decision;
 - (d) the date of the capital decision;
 - (e) the conclusion on the application of Articles 73 and 97 of Directive 2013/36/EU;
 - (f) for decisions taken on a consolidated basis, the conclusion on the adequacy of the consolidated level of own funds held by the group of institutions;

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- (g) for decisions taken on an institution basis, the conclusion on the adequacy of the own funds held by the institution;
 - (h) for decisions taken on an institution basis, the conclusion on the level of own funds that the relevant institution is, in accordance with point (a) of Article 104(1) of Directive 2013/36/EU, required to hold in excess of the requirements set out in Chapter 4 of Title VII of this Directive and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
 - (i) for decisions taken on a consolidated basis, the conclusion on the required level of own funds that the group of institutions is, in accordance with point (a) of Article 104(1) of Directive 2013/36/EU, required to hold on a consolidated basis in excess of the requirements set out in Chapter 4 of Title VII of this Directive and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
 - (j) information on the minimum prudential requirements which apply to each institution pursuant to Article 92 of Regulation (EU) No 575/2013 and Articles 103, 128, 129, 130, 133 of Directive 2013/36/EU and on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings;
 - (k) the reference date to which the conclusions referred to in points (e) to (i) relate;
 - (l) description of how the assessment, views and reservations expressed by the relevant competent authorities and the consolidating supervisor were considered, as applicable;
 - (m) the timeline for the implementation of the conclusions referred to in points (h) and (i), as applicable.
2. Decisions taken in the absence of a joint decision shall also set out the items specified in Article 10(2) to (4) on an individual and on a consolidated basis, as appropriate.

Article 17

Drafting decisions taken in the absence of a liquidity joint decision

1. Decisions taken in the absence of liquidity joint decision shall be set out in a document that contains each of the following:
 - (a) the name of the competent authority taking the liquidity decision;
 - (b) the name of the institution or the group to which the decision relates and applies;
 - (c) references to applicable Union and national law relating to the preparation, finalisation and application of the liquidity decision;
 - (d) the date of the liquidity decision;
 - (e) for decisions taken on an institution basis, the conclusion on the liquidity adequacy;
 - (f) for decisions taken on a consolidated basis, the conclusion on the liquidity adequacy;

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- (g) for decisions taken on an institution basis, the conclusion on any measures taken to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of Directive 2013/36/EU and relating to the need for institution-specific liquidity requirements in accordance with the need for specific liquidity requirements pursuant to Article 105 of that Directive;
 - (h) for decisions taken on a consolidated basis, the conclusion on any measures taken to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of Directive 2013/36/EU and relating to the need for specific liquidity requirements in accordance with Article 105 of that Directive;
 - (i) the reference date to which the conclusions referred to in points (e) to (h) relate;
 - (j) a description of how the assessment, views and reservations expressed by the relevant competent authorities and the consolidating supervisor were considered, as applicable;
 - (k) the timeline for the implementation of the conclusions referred to in points (e) to (h), as applicable.
2. Decisions taken in the absence of a joint decision shall also set out the items specified in Article 11(2) to (3) for each institution and at a consolidated level.

Article 18

Communication of decisions taken in the absence of capital joint decision and liquidity joint decision

1. The consolidating supervisor shall provide the decision document referred to in Article 15(2) to the management body of the EU parent institution.
2. The respective relevant competent authorities shall provide to the management bodies of the institutions within their jurisdiction to which the joint decisions apply the part of this document that is relevant for the respective institutions.
3. The consolidating supervisor shall, where appropriate, discuss the decision document with the EU parent institution to explain the details of the decisions taken in the absence of a capital joint decision or liquidity joint decision, and their application.
4. The relevant competent authorities shall, where appropriate, discuss the respective part of the decision document with the institutions within their jurisdiction to which the decisions apply, to explain the details of the decisions taken in the absence of a capital joint decision or a liquidity joint decision, and their application.

Article 19

Monitoring of the application of decisions taken in the absence of capital joint decision and liquidity joint decision

The application of decisions taken in the absence of a capital joint decision or liquidity joint decision shall, where applicable, be monitored by the consolidating supervisor and the

relevant competent authorities in relation to the institutions for whose supervision they are responsible.

SECTION III

UPDATE AND EXTRAORDINARY UPDATE OF THE JOINT DECISION AND OF DECISIONS TAKEN IN THE ABSENCE OF A JOINT DECISION

Article 20

Extraordinary update of the joint decision

1. A request for an extraordinary update of any joint decision on the application of point (a) of Article 104(1) or Article 105 initiated by the consolidating supervisor pursuant to Article 113(1) of Directive 2013/36/EU or by a relevant competent authority pursuant to Article 113(4) of that Directive shall be communicated to all relevant competent authorities by the consolidating supervisor. The extraordinary update shall follow the process set out in Articles 9 to 14.
2. A request by a relevant competent authority for an extraordinary update of the joint decision at the level of an institution other than the EU parent institutions, EU parent financial holding company or EU parent mixed financial holding company to be addressed on a bilateral basis between the consolidating supervisor and the relevant competent authority concerned, shall be made in writing and be fully reasoned.

The request shall be communicated to all relevant competent authorities by the consolidating supervisor, specifying a deadline for relevant competent authorities to comment on whether the update should be addressed on a bilateral basis. The communication to relevant competent authorities shall include a draft joint decision document that complies with Article 10, in the case of a draft capital joint decision or Article 11, in the case of a draft liquidity joint decision.

If no request for the extraordinary update to be addressed on a non-bilateral basis is received from any of the relevant competent authorities within the specified deadline the update shall be addressed on a bilateral basis. In that case, only the consolidating supervisor and the relevant competent authority which requested the extraordinary update shall be required to contribute to and agree on the joint decision.

3. Where a relevant competent authority does not wish to submit a contribution to the updated joint decision in accordance with Article 9, the consolidating supervisor shall prepare the updated joint decision on the basis of the competent authority's most recent contribution to the joint decision document.

Article 21

Annual and extraordinary update of decisions taken in the absence of joint decision

1. The annual update of the decisions taken in the absence of joint decision shall follow the steps pursuant to Article 4(2), in so far as each step is relevant for the application of Article 97(4).
2. Any extraordinary update of decisions taken in the absence of joint decision pursuant to Article 113(4) shall follow the process set out in Articles 9 to 14.

CHAPTER IV

Final provisions

Article 22

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

4. Accompanying documents

4.1 Cost- Benefit Analysis

4.1.1 Introduction

In December 2010, the Committee of European Banking Supervisors (CEBS), predecessor of EBA, issued the Guideline for the joint assessment and joint decision regarding the capital adequacy of cross-border groups (GL 39). These Guidelines provide guidance on how to cooperate on the risk assessment process and how to apply the CRD provisions regarding ICAAP (Article 73), SREP (Article 97) and the prudential measures subject to the joint decision process (Article 113).

The CEBS also issued the “Guidelines for the Operational Functioning of Supervisory Colleges” (GL 34) which in Chapter 5 includes guidelines on how the work of the college fits into the cooperative framework defined by the GL39.

The empowerment for issuing the draft implementing technical standards stipulated in Article 113(5) of CRD IV covers similar scope of supervisory cooperation as the abovementioned guidelines (reach of joint decision on institution specific prudential requirements).

EBA guidelines GL39 and GL34 were issued under the “comply or explain” regime and have not been binding for the competent authorities. The draft implementing technical standards, which build to some extent on the existing Guidelines, will be binding ensuring maximum harmonisation across the EU.

This cost-benefit analysis evaluates the level of magnitude of the costs and benefits stemming from the add-on elements to be implemented by the draft ITS. The impact assessment is based on a questionnaire that was developed and on which answers were provided by members of relevant substructures of the EBA. This questionnaire intended to assess, inter alia, the level of implementation of the existing Guidelines GL39 and Chapter 5 of GL34 by the competent authorities and to assess the impact of the envisaged preferred policy options.

4.1.2 Procedural issues and stakeholder consultation

While developing the draft implementing technical standards, and before the publication of the consultation paper, it was deemed important to consult the supervisory authorities on the policy options and on the approach favoured by the draft ITS, with special focus on the proposed procedures for interaction between consolidating supervisors and host supervisors as well as on the templates to be used for the reach of the joint decision on institution specific requirements.

In this context, an impact assessment questionnaire was developed, organised in the following main sections:

- level of implementation of the existing Guidelines (GL39, and chapter 5 of GL34);
- current supervisory framework;
- comparison between current and future framework, as proposed by the draft ITS;
- estimated costs and benefits of the draft ITS.

The sections below describe in detail the results from the analysis of the submitted responses for all these four areas.

4.1.3 Level of implementation and current supervisory framework

85% of the responses received reported a 100% level of implementation, while the remainder reported a 75% level of implementation, indicating that the Guidelines have almost been fully implemented.

4.1.4 Comparison between the current and future supervisory framework

In general, the proposed process and the templates in the draft ITS are described as clearer and easier to follow, both for consolidating and host supervisory authorities. As “similar” are regarded from the perspective of credit institutions and other stakeholders.

4.1.5 Problem definition

The main problem that the EBA is called to address is the specification of the process followed by supervisory authorities in order to reach joint decisions pursuant to Article 113 of CRD within the required timeline.

To accomplish this, the EBA considers that one of the main objectives of binding technical standards is to achieve the maximum possible harmonisation as a means to ensure a level playing field, the prevention of regulatory arbitrage opportunities, enhance supervisory convergence and legal clarity. On the other hand, the resolution of the identified problem should account for reducing the compliance burden of the credit institutions and the supervisory authorities.

4.1.6 Objectives

The impact assessment has been carried out having in mind that the four general objectives of Directive 2013/36/EU are met and the negative externalities have been contained⁴. However, for the purpose of the forthcoming analysis, only three general objectives are more relevant to the specific draft ITS:

- Enhance financial stability (G-1); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own funds held by the group of institutions with respect to its financial position and risk profile and on the required level of own funds for each institution within the group of institutions and on a consolidated basis. These fully reasoned joint decisions will be directly linked and supported by the results of supervisory assessments on the arrangements, strategies, processes and mechanisms implemented by the institutions and evaluation of risks to which the institutions are or might be exposed. The joint decisions are expected to have a (in)direct positive effect on the confidence sentiment of both the depositors and other stakeholders. This will take place after the consultation paper has been published and the EBA has communicated to the public the timeline and the purpose of the implementation of the new rules. The fact that the EU Member States are to apply harmonised rules will prohibit the abrupt movements of funds and will enhance financial stability,
- Enhance safeguarding of depositor interests (G-2); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own funds, each institution within the group of institutions will be required to hold an adequate amount of own funds reflecting the individual risk profile of an institution and the risk profile of a group of institutions. This should ensure that identified risks are appropriately covered by own funds and will not jeopardise the interests of depositors of one jurisdiction over the other, safeguarding the depositors interest across EU member states, and
- Ensure international competitiveness of EU banking sector (G-3); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own funds each European banking group should have a strong capital position reflecting the assessment of the individual risk profile and the management of the risks to which it is exposed.

The operational (specific) objectives that are the most relevant and addressed, implicitly or explicitly, by this cost-benefit analysis are the following:

- Prevent regulatory arbitrage opportunities (S-3) by ensuring the uniform process of reaching joint decision by competent authorities across the Member States with binding steps and outcomes for each step in the process;
- Enhance legal clarity (S-4) by defining the detailed process of reaching joint decision accompanied with common templates for the communication of the SREP assessment and group risk assessment report, by defining the attributes of the joint decision documents and by including provisions covering the communication of the joint decision process to the supervised institutions;

⁴ For more information refer to the Commission Staff Working Paper – Impact Assessment accompanying the document ‘Regulation of the European Parliament and the Council Regulation on prudential requirements for the credit institutions and investment firms’ (http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_regulation_en.pdf)

- Reduce compliance burden (S-5); by stipulating all individual steps for the reach of the joint decision, specifying templates to be used for communication of SREP results and for the joint risk assessment report, noting binding attributes of the joint decision document in order this to be considered as a fully reasoned joint decision and rules for monitoring of the implementation of the joint decision outcome. The inclusion of all these elements in the draft ITS is expected to facilitate competent authorities adherence to the legal requirements of the level one text, and credit institutions compliance with the resulting obligations as well as to ensure legal clarity of the outcome.
- Enhance a level playing field (S-6); by introducing the uniform process of reaching joint decision covering the same scope of the supervisory assessment and defining all required attributes of the joint decision outcome reflected in the group risk assessment report and joint decision document; and
- Enhance supervisory cooperation and convergence (S-7); by introducing common communication tools among supervisory authorities through the introduction and use of templates, uniform processes and binding attributes of joint decision document. The draft ITS also includes provisions covering the extraordinary update of the joint decision and binding attributes of decisions taken in the absence of joint decisions.

4.1.7 Policy options: analysis and comparisons / preferred options

The cost-benefit analysis considered the following policy options as being the most relevant for the draft implementing technical standards;

- I. Developing the draft Implementing Technical Standards based on the GL39 and aspects of the GL34 (chapter 5);
- II. Developing the draft Implementing Technical Standards from scratch, ignoring the already implemented Guidelines.

The Guidelines developed by CEBS were the product of consultation among EU supervisory authorities and were perceived as to be pointing in the right direction. Since many of the non-binding provisions introduced by GL39 have been adopted by the majority of the competent authorities, there was no reason for the EBA to relaunch the discussion on the same topics. Therefore, the aforementioned Guidelines constituted the baseline for the development of the draft ITS. The draft ITS is expected to make the rules depicted in the Guidelines – to the extent there are similarities - legally binding for all Member States and at the same time will provide clarity on the details of the processes that had not been addressed by the Guidelines. To this end, the impact assessment addresses some second-order options to choose among.

The following second-order policy options were identified as the most important ones in terms of resulting incremental costs and benefits. The questionnaire invited the supervisory authorities to note the five most important incremental costs and benefits, and to identify the policy options from which these costs and benefits resulted.

- i) Provisions requiring the involvement of other competent authorities and third country competent authorities;

The following are the policy options that were discussed with regards to the involvement of other competent authorities and third country competent authorities:

- a) Not to include any reference to the involvement of other competent authorities and third country competent authorities in the ITS, leaving such a possibility at the discretion and to judgement of the consolidating supervisor and other EU competent authorities;
- b) To include in the draft ITS provisions under which other authorities shall be invited, where appropriate.

The policy option that was generally supported by competent authorities was policy option (b), as it was deemed that any decision on the involvement of other competent authorities and third country competent authorities taken at the beginning of the joint risk assessment and joint decision process with discussion between the consolidating supervisor and the relevant competent authorities and by following the provisions of Level 1 text, will improve transparency in the decisions taken and will

ensure that possibilities of involving other competent authorities and third country supervisors will be carefully considered and explored to the maximum extent possible.

- ii) Provisions requiring agreement on the timetable to be followed for the reach of the joint decision;

The following are the policy options that were discussed:

- a) To define a unified timeline with common reference dates that would be binding across all colleges;
- b) To develop provisions that will deliver appropriate balance between i) flexibility needed in order for each college to organise the timeline of the joint risk assessment and joint decision process according to its specificities, and ii) convergence in the organisation of the joint risk assessment and joint decision cycle by requiring binding steps of this timetable that will need to be agreed in advance.

The preferred policy option is policy option (b), given that, as stated below, it is felt that it delivers the appropriate balance between flexibility and convergence in the organisation of the JRAD cycle and the minimum steps to be followed across colleges.

- iii) Provisions requiring contributions to the draft risk assessment report by using the SREP report template;

The following are the policy options that were discussed:

- a) To develop a SREP report template that will be mainly used as a communication tool between the competent authorities involved in the JRAD process;
- b) Not to develop and include a SREP report template in the draft ITS.

The policy option that was favoured in this case is policy option (a), given that the template was considered as an important tool for communicating the SREP results in a common way, without touching on any methodological issues on how supervisory review and evaluation process is performed from competent authorities. Thus, while developing this template, possible interactions and links with the work performed by other substructures of EBA and in particular the Guideline on common SREP (Article 107 of Directive 2013/36/EU) were duly considered.

- iv) Provisions requiring contributions from the competent authorities in the draft joint decision;

The following are the policy options that were discussed:

- a) To include provisions in the implementing technical standards requiring host supervisory authorities to contribute to the draft joint decision document; while
- b) To include appropriate details in the SREP report template, without requiring contributions of the draft joint decision document. This option might not resolve the current practices on focusing the requested contributions on the risk assessment, failing to provide full reasoning on the adequacy of capital and on the required level of own funds.

As the joint decision process includes two main outcomes (group risk assessment report and joint decision document) it was also decided that contributions from competent authorities should consist of two separate parts, the second of which will be a draft contribution to the joint decision (option (a)). This contribution shall provide a clear statement, apart from the conclusion on the adequacy of own funds, on the required level of own funds and appropriate reasoning supporting such a proposal. It was deemed that these provisions will bring convergence in the different practices followed across colleges, both with regards the process and the content and reasoning of the joint decision document. In addition, it is believed that by requiring the host supervisory authorities to submit contributions that are not only limited to the SREP report, but they also include a proposal for the joint decision will ensure a better link between the assessment performed and the proposed outcome of such an assessment.

- v) Provisions covering communication of the joint decision to the parent and its institutions;

The following are the policy options that were discussed:

- a) One option would be not to specify details of the communication and rely only on the Level 1 text.

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- b) To include provisions that will specify the communication with a banking group and also to whom the communication should be addressed.

Given the need for clarity on the roles and responsibilities and for increased transparency on the actual communication and the recipient of this communication, the competent authorities favoured policy option (2).

- vi) Provisions covering the monitoring of the implementation of the joint decision;

The following are the policy options that were discussed:

- a) To include provisions on the monitoring of the implementation; and
- b) Not to include provisions covering the monitoring of the implementation of the joint decision can be regarded as an alternative option. However, this was not supported, given that it was felt important to include provisions in the ITS that will promote transparency and clarity among competent authorities on any follow-up actions taken in order to ensure adequate and efficient monitoring of the joint decision.

Option (a) was supported as being the one expected to enhance legal clarity on the steps following the reach of joint decision, especially in cases where an action is needed from the credit institution in order to implement the joint decision by a specific date.

- vii) Provisions covering the case of extraordinary update of joint decision;

The following are the policy options that were discussed:

- a) To develop provisions requiring communication of the intention of either the consolidating supervisor or any of the relevant competent authorities to trigger extraordinary update of the JD on a bilateral basis to all other competent authorities giving them the possibility to initiate a general update of the joint decision;
- b) To rely only on the Level 1 text.

Level 1 text covers the possibility of an extraordinary update of the joint decision and specifies that this could be done on a bilateral basis. This situation was discussed in detail while drafting the ITS and a decision was made to include a provision requiring that the intention to trigger extraordinary update of the joint decision on a bilateral basis shall be communicated to all relevant competent authorities giving them the possibility to initiate a general update of the joint decision (option (a)). It was deemed that this would ensure transparency in the “treatment” of the extraordinary updates and give the possibility to any of the other competent authorities to be fully informed and assess the possibility of triggering a general extraordinary update of the joint decision.

- viii) Elaborating on the joint decision documents;

The following are the policy options that were discussed:

- a) To develop a common template for the joint decision document;
- b) To develop provisions specifying the minimum binding attributes of the joint decision document.

Option (a) was not supported by several competent authorities as it was deemed to be too burdensome and restrictive, thus a need for certain flexibility in the form of the joint decision, that will allow competent authorities to structure the joint decision document based on the particularities of each case, was finally supported. In addition, option (b) was considered as an important policy option in order to ensure that joint decisions are articulated in such way that they qualify as fully reasoned joint decisions.

- ix) Provisions covering the process of unilateral decisions taken in the absence of joint decision;

The following are the policy options that were discussed:

- a) To rely only on the Level 1 text, where the process for dealing with the absence of joint decision is described;
- b) To develop provisions specifying the details of the process of formalising and communicating decisions taken in the absence of joint decisions.

Level 1 text does not specify all the details covering such a situation, especially details on the timeline and communication issues. It was decided that the unified application of the joint decision process would be ensured if the details of unilateral decisions were elaborated in the ITS (policy option (b)).

x) SREP report template and joint risk assessment report template (Annex 1 and 3 of the draft ITS);

Policy options considered while developing the SREP report are covered under iii).

- a) A template for the group risk assessment report was developed, based on the structure of the SREP report template, to ensure that all aspects of individual contributions are considered in the group risk assessment report. The template also includes additional items where group related issues (e.g. diversification) are reflected.
- b) The alternative to the option (a) above was to create templates from scratch, something which would not only be time consuming and inefficient, but may also result in and allow inconsistencies between individual contributions and the joint risk assessment report.

4.1.8 Cost-benefit Analysis

(1) Benefits

With regard to what concerns consolidating supervisors, member states participating in the questionnaire expected several incremental benefits from the ITS.

- The most frequent policy option mentioned as being beneficial refers to the provision relating to the timeline to be followed for the reach of the joint decision. In this respect, supervisors anticipate a timely joint decision, mainly as a result of clear description of the operational steps of the process and of the binding timetable it implies.
- The second most frequent provision mentioned is one relating to the use of the SREP template for the contribution of host supervisors. According to the answers received, the use of a uniform template has the advantage of clarifying the responsibility and the level of involvement of the contributors in the joint decision process. Moreover, many supervisors pointed out the benefit of gathering homogenous data which facilitates the treatment and could even lead to cost cutting. Another benefit expected from this provision is the enhancement of transparency.
- The provision relating to the process in the case of unilateral decision was also considered by several supervisors to be positive also, because it clarifies the process in case of disagreement.
- Another important incremental benefit expected from the ITS, from a consolidating supervisors' point of view, is the improvement in the quality of the work performed, due to provisions relating to the involvement of all relevant competent authorities, the requirement of contribution from college members in the draft joint decision and also thanks to the process for triggering an extraordinary update of the joint decision.

From a host authority perspective, the main provisions in the ITS mentioned as being beneficial in the joint decision process are similar to those mentioned by consolidating supervisors, although the incremental benefits are not always the same.

- The majority of supervisors pointed out that the use of a uniform template for their contribution in the risk assessment will not only clarify their involvement but it will also primarily facilitate the unification of the approach and the internal procedures at an individual level which will generate a gain in efficiency.
- The second most frequent provision mentioned relates to the process of unilateral decisions in the absence of joint decisions, which has the advantage of clarity and will therefore facilitate cross-border supervision.
- Host supervisors also welcomed the provision relating to the timeline that clarifies the process and, as a consequence, allows clear workflow and better organisation and planning. This provision was also highlighted as being beneficial to host authorities, since it will increase the commitment to meet the deadline.

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- Policy option 8 related to the elaboration of the joint decision document was also mentioned several times by supervisors as it is expected that this provision will increase transparency and will provide useful information.

From other stakeholder's points of view and more particularly from the perspective of credit institutions, the expected benefits from the draft ITS can be summarised as follows:

- The most frequent policy option mentioned related to provisions covering the communication of the joint decision to the parent company and its subsidiaries. Supervisors expect incremental benefits in the field of communication. Efficiency, transparency and harmonisation were the terms used by supervisors.
- Policy option number viii) "*Elaborating of the joint decision document*" was also mentioned several times on the benefit side of the draft ITS. Supervisors consider that the attributes of the joint decision will clarify the reasoning, which will enhance the support of the decision reached by college members.
- The benefit of having more clarity on the legal framework surrounding the process for reaching joint decision on capital was also mentioned.

(2) Costs

- Home supervisors have pointed out several potential costs arising from the draft ITS on joint decisions. More specifically, from the consolidating supervisors' perspective, authorities have pointed out that the draft ITS may deprive the joint decision procedure from flexibility due to the fact that there is no provision regarding the concept of materiality both in terms of size and qualitative characteristics in the context of the Group as a whole. In addition, the increasing time for the new formalities was mentioned and it has also been underlined that changes should be undertaken in the procedures of the joint decision per competent authority. In order to implement these changes, additional resources are needed.
- Another policy option that was frequently mentioned is Policy Option 10: "SREP report template and joint risk assessment report template (Annexes to the draft ITS)". According to the home supervisors the extended version of the new templates sets impediments because the implementation of the templates will require changes in the current national practices and templates, leading to additional training costs for the use and filling in of the templates, and effort to aggregate and consolidate the involved data. The other most frequent options selected were Policy Option 8 and Policy Option 5. With regard to Policy Option 8 : "Elaborating on the joint decision document", the home authorities have made a special reference to the lack of flexibility and the additional workload that these provisions imply in developing the joint decision document and for the competent authorities, due to increasing formalities and the additional effort required to present the required details. With regard to Policy Option 5 : "Provisions covering communication of the joint decision to the parent and its institutions", the incremental costs stemming from the provision of a more detailed report that is expected to be created, sent and discussed, will require additional time from the home supervisors.
- From the host perspective, the conclusions are similar. Policy Option 10 is that most preferred for reasons similar to those from a home perspective, while Policy Option 2 "Provisions requiring agreement on the timeline to be followed for the reach of the JD" was mentioned along with concerns on the additional workload that will result in preparing the timeline, and fears that such a workload may slow down the whole process.
- As far as the other stakeholders are concerned, a few issues regarding the costs to other stakeholders were raised, and mostly focused only on costs affecting credit institutions. The policy options mentioned most frequently are Policy Options 2, 3 and 10, focusing mainly on incremental costs that may be borne by the credit institutions, due to additional information that they are expected to provide.

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 16 August 2013. Five (5) responses were received, of which three were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, together with the analysis and discussion triggered by these comments and the actions taken to address them, where it was deemed necessary.

In many cases several industry bodies made similar comments, or the same body repeated its comments under different sections of the draft ITS. In such cases, the comments, and the EBA analysis are included in the most appropriate section of this paper, in the opinion of the EBA.

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

Summary of key issues and the EBA's response

The comments received during the consultation period address different aspects of the draft ITS on capital and liquidity joint decisions, both in terms of process and content of the draft group risk assessment report, and of articulation of the joint decision document.

Some of the credit institutions that provided responses to the draft ITS requested that cross-border banking groups and especially the parent entity be actively involved in the preparation of the timetable and the joint decision process itself with the possibility for them to be consulted on the draft joint decision document before it is made final by the competent authorities. Even though the EBA recognises that this is a legal requirement in specific jurisdictions, it was not felt appropriate to allow for a more prominent involvement of group representatives in the joint decision process, given the nature of the joint decisions that must be run and owned by the competent authorities.

Requests for clarity on the involvement of third country competent authorities and other competent authorities, and raising concerns on confidentiality issues, have been addressed by providing clear references in the draft ITS to Level 1 text (Article 116(6)) and the assessment of the confidentiality provisions of third countries that need to be performed and agreed by all EEA members of the college before any decision on having third country supervisors involved in the joint risk assessment. If third country competent authorities have been involved in the joint risk assessment or have provided input to the draft group risk assessment through the consolidating supervisor, the draft ITS requires the consolidating supervisor to inform the relevant competent authorities on the nature of the third country competent authorities' involvement.

The EBA also felt that the draft ITS already includes clear references to the monitoring and communication of the capital and liquidity joint decisions and the monitoring and communication of decisions taken in the absence of a joint decision. Requests that the consolidating supervisor take decisions in the case of an absence of joint decisions were considered as clearly not in accordance

with the provisions of the Level 1 text (see Article 113(3) of Directive 2013/36/EU) and as such were not taken on board. The draft ITS has been also revised in order to clarify the scope of the supervisory discussion between the competent authorities and the group representatives following the finalisation of the joint decision. However, the performance of such supervisory discussion remains at the discretion of the competent authorities.

With regards to the group risk assessment reports, there were requests for clear references in the draft ITS on the size and complexity of each institution which shall determine the input and the weight of the specific contribution in the group risk assessment report. The draft ITS already contains references on the relevance of the institution within the group and their significance in the local market. The criteria for determining relevance and significance are expected to be communicated between the competent authorities during the update of the group mapping, while the templates of the draft ITS require that the competent authorities provide information on the total assets of each entity and on its categorisation, which is expected to be performed based on national classification until a common categorisation approach is in place as per EBA Guidelines for common SREP methodologies and procedures. The category to which the institution is assigned shall also reflect its systemic importance.

Some comments concerning methodological aspects of the performance of individual supervisory reviews and evaluation processes or requests for EBA to perform peer reviews on the involvement of third country competent authorities were not addressed, since they were considered to be outside the scope of the draft ITS.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Absence of joint decision	At the moment the draft ITS does not include provisions on the monitoring of implementation of decisions taken in the absence of joint decision and communication on this regard between the competent authorities.	The draft ITS includes specific provisions on communication and monitoring of decisions taken in the absence of joint decisions (Articles 18 and 19 respectively). Also, aspects of interaction and communication of unilateral decisions between the relevant competent authorities and the consolidating supervisor are covered in Article 15.	No changes have been applied.
Absence of joint decision and role of consolidating supervisor	<p>Provisions of Article 15 and 18 leave the potential lack of supervisory consensus unresolved, with banks bearing the costs of such a situation.</p> <p>Proposal to have Article 15 amended in order to include provisions that will mandate the consolidating supervisor as the competent authority that makes the final decision on the capital adequacy of the group and its institutions in the case of disagreement.</p> <p>In addition, Article 18 to be amended in order that the management of the bank receives a single decision document, since there are concerns that the banks may need to comply with, and to deal with, two different supervisory approaches.</p>	<p>Article 113(3) of Directive 2013/36/EU notes the possibility for decisions to be taken on a unilateral basis by the consolidating supervisor and the relevant competent authorities in the case of disagreement. Thus, the ITS cannot in any case appoint the consolidating supervisor as the competent authority responsible for taking the capital and liquidity related decisions covering the group and the institutions of the group in the case of disagreement. Instead, the draft ITS elaborates on the provisions of the level 1 text and specify the process of interaction and cooperation between the competent authorities in the case of no joint decision being reached.</p> <p>In addition, even in the absence of a joint decision, the consolidating supervisor still needs to gather in one</p>	No changes have been applied.

		single document all the unilateral decisions taken (Article 15(2)) and this document is communicated to the management body of the parent institution (Article 18(1)).	
Communication of capital and liquidity JD	Supervisory discussion following the communication of the joint decision document shall be an obligatory element of the process and as such in Article 13(3) the phrase "where appropriate" shall be deleted.	The main objective of the provisions of Article 13(3) is to ensure appropriate balance on the engagement between the competent authorities and the supervised institutions in an effort to explain the details of the decisions taken and their application, while at the same time allowing appropriate degree of flexibility to the authorities to decide on the form, timing and scope of that discussions avoiding to implement it as a binding element of the process.	Please refer to change in Article 13(3) where the scope of the previously referred to "supervisory discussion" has been clarified.
Communication of capital and liquidity JD	The EBA to elaborate further the provisions on the communication of the joint decision document and in particular the components of such communication in order that the supervised institutions get a better understanding of the arguments for the joint decision and its potential remedial actions.	Article 13 of the draft ITS specifies the scope of communication from the consolidating supervisor to the management body of the parent institution and from the respective host authorities to the management body of the subsidiaries they supervise. It is noted that the provisions of the draft ITS text are in accordance with the level 1 text according to which the <i>"the decisions taken shall be set out in a document containing full reasons [...]. The document shall be provided..."</i> meaning that the document which notes the decisions taken by the consolidating supervisor and the host competent authorities is the same document that is communicated to the parent institution of the group, and as such both clarity on the reasons leading to the joint decision and transparency are ensured.	No changes have been applied.

<p>Confidentiality issues and involvement of third country competent authorities</p>	<p>Concerns on confidentiality issues with data sharing, especially with regards to third country competent authorities.</p> <p>It is not clear how the involvement of other competent authorities and competent authorities of third countries will be decided.</p> <p>Cross references to Article 51 of Directive 2013/36/EU and the ITS to reflect the GL34 and GL39 provisions.</p> <p>Consolidating supervisor shall decide as to the involvement of third country competent authorities. However, such decisions shall be taken in a transparent and consistent way.</p> <p>EBA to work on setting-up a framework that ensures the protection and confidentiality of EU firm's data when shared with non-EEA competent authorities.</p>	<p>Article 3 of the draft ITS has been revised in order to ensure appropriate links to Article 116(6) of Directive 2013/36/EU according to which the involvement of third country competent authorities in the activities of the college are subject to the assessment of the third countries confidentiality provisions as equivalent according to the opinion of all EEA competent authorities members of the college.</p> <p>The last suggestion is outside the scope of these draft ITS.</p>	<p>Please refer to changes applied in Article 3(1) of draft ITS.</p>
<p>Transparency on the Involvement of other competent authorities and competent authorities of third countries</p>	<p>Consolidating supervisor should disclose to the firm the competent authorities that have been involved in the process.</p> <p>EBA to perform peer reviews on the involvement of other competent authorities and to work on the consistency and transparency with regard to the extent of involvement of third country competent authorities.</p>	<p>There was no support for such a disclosure to be made from the consolidating supervisor to the parent of the cross border banking group as it is not clear what the underlying benefits from such a disclosure would be. Instead the draft ITS has been amended in order to ensure that no matter what is the scope and level of involvement of other competent authorities and competent authorities of third countries in the joint risk assessment, the consolidating supervisor shall inform all relevant competent authorities in this regard.</p> <p>The last suggestion is out of the scope of these ITS.</p>	<p>Please refer to change in Article 3(3) of the draft ITS.</p>
<p>Definitions</p>	<p>Avoid cross references to Directive and Regulation and instead provide definitions of the terms used within the</p>	<p>There is no need to re-define terms included already in the level one text. The draft ITS should be read in</p>	<p>No changes have been</p>

	draft technical standards.	conjunction with the level one text, both CRD/CRR.	applied.
Engagement with the supervised institutions on the draft decisions	Consultation between the EU parent institutions and its institutions, and the relevant competent authorities on the draft joint decision shall be a procedural element of the ITS and not optional, or where this is required by the national legislation.	The joint decision on institution-specific prudential requirements is regarded as a process and product of the supervisory competent authorities, and as such it is essential to ensure independence both of the process and the assessments and discussions involved. The result of this process means that the joint decision document is to be communicated in a transparent and consistent way, providing all the underlying reasons for such a decision, from the competent authorities to the institutions in their jurisdictions, and the provisions of the draft ITS elaborates on this objective.	No changes have been applied.
Exceptional update of joint decision	Exceptional updates of the joint decision will most probably be required as a result of corporate events which would affect the risk profile of the Group or of a significant institution within the Group. Thus, the draft ITS should allow for the consolidating supervisor to issue an interim individual capital guidance without necessarily requiring a joint decision update. The approach to be followed shall be communicated to the EU parent or its institutions to allow for appropriate planning.	The draft ITS elaborates on the provisions of Article 113(4) of Directive according to which the joint decisions shall be updated on an annual basis, or more often in exceptional circumstances. The updates of the joint decision documents are covered by Article 20 of the draft ITS according to which such updates can be addressed on a bilateral basis, but never on an individual basis, regardless of the urgency and the scope of the update, in accordance with the provisions of the level 1 text.	No changes have been applied.
ICAAP assessment	Involvement of the consolidating supervisor when host competent authorities assess regional ICAAPs (at least for the most material regional ICAAPs of each Group).	The draft ITS does not address any methodological aspects on the application of the Article 73 and Article 97, thus such proposals are regarded as being outside the scope of the draft legislation.	No changes have been applied.

ICAAP assessment	Competent authorities to require ICAAP information at group level.	Outside the scope of the draft ITS.	No changes have been applied.
Time differences in ICAAP submissions and assessments	Differences in the timing of ICAAP submissions and ICAAP assessments may be problematic for the joint decision process. Suggestions for the EBA to work on an EU wide timetable for completing consolidated group ICAAP, specifying assessment frequency.	Outside the scope of the draft ITS.	No changes have been applied.
Macro-prudential requirements	To enhance further provisions on information regarding prudential requirements and macro prudential requirements (e.g. by specifying the circumstances that led to such requirements, the changes in the intensity of macro-prudential or systemic risk assessments etc). Questioning whether the "designated authorities" as per CRR Art 458 have been taken into account and captured by the term "relevant competent authorities".	There is no legal mandate for the ITS to elaborate and provide "justification" of macro-prudential requirements in the joint decision document. Designated authorities as per Article 458 of CRR are not included under the definition of relevant competent authorities. However, the draft ITS promotes the exchange of information between the consolidating supervisor and the host competent authorities on any macro-prudential measures that may affect the capital and liquidity requirements of the institutions of a cross-border banking group.	No changes have been applied.
Pillar 1 add-ons	Capital requirements need to be set at the appropriate legal institution level in order to avoid double counting and provisioning at two or more different institution levels. In this context, risks that are relevant to specific legal institutions and that have been addressed and appropriately capitalised at that level, shouldn't be addressed again at consolidated level.	Article 7 of the draft ITS elaborates on provisions according to which the consolidating supervisor and the host competent authorities need to discuss the reconciliation of the quantitative information in the respective contributions on proposed joint decision figures. Methodological aspects of this reconciliation fall outside the scope of the draft ITS and is expected to be covered by other EBA products (e.g. Guidelines on	No changes have been applied.

		common SREP)	
Planning of JD process	Involvement of the EU parent institution at an early stage of the process. Supervised institutions need to be aware of the timetable for the JD process in order to manage their resources (particularly if there are expectations for convergence in the deadlines). EU parent institution and its institutions to be granted full status of a party to the proceedings (Art. 4(2)(h) - the clause "where required by the legislation of a Member State" shall be deleted). The timetable of the joint decision process to be communicated to the parent and its institutions as soon as this has been agreed.	The joint decision on institution-specific prudential requirements is a process between supervisory competent authorities and as such it is essential to ensure independence both of the process and the assessments and discussions involved within this process. Some of the elements of the timetable covering this process may indeed be communicated to the parent and its institutions.	Please refer to changes applied in Article 4 of the draft ITS.
Proportionality	Competent authorities shall consider the size and complexity of each institution when requesting input for assessment purposes.	Article 6(4) makes specific reference to the principle of proportionality and the relevant and significance of respective institutions.	No changes have been applied.
Proportionality	Essential to define the criteria for determining the "relevance of the institutions within the group" and the "significance in the local market". Relevance in Article 6(5) shall be assessed with regards to the banking group and not with regards to the relative size of the subsidiary to the host Member State.	The criteria to define relevance of an institution for the group and significance in the local market are not regarded as elements falling directly under the ITS on joint decisions on institutions specific prudential requirements, but rather as provisions of the EBA Guidelines on Colleges and on the future technical standards on colleges of supervisors.	No changes have been applied.
Templates	Support the inclusion on the templates as part of the draft ITS as an element that will facilitate standardisation of the process followed in the EU.	No further analysis is needed.	No changes have been applied.