

## EBA FINAL draft regulatory technical standards

on collaboration concerning supervision between the competent authorities of home and host Member States specifying the information that competent authorities shall supply to one another under Article 50(6) of Directive 2013/36/EU



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## 1. Executive summary

The draft regulatory technical standards (RTS) specify the information that host Member State competent authorities and home Member State competent authorities shall exchange with each other in accordance with Article 50 of Directive 2013/36/EU (the Capital Requirements Directive [CRD]). These draft RTS concern the information to be exchanged in relation to an institution which operates through a branch or through its freedom to provide services in one or more Member States other than that in which it is incorporated. The standards relate to the exchange of information between competent authorities and do not concern requests for information from the supervised institutions. As the standards are largely built on the common reporting technical standards, to the extent that quantitative information is concerned and focuses on the supervisory information available to the competent authorities through the conduct of their supervisory tasks, the EBA believes that all information categories specified in these standards are available to the competent authorities and the authorities are able to meet their information exchange obligations set out in Article 50 and these RTS without requesting additional information from institutions.

The draft RTS are structured in two major parts: (i) information exchange during going concern situations, which specifies information categories to be provided by competent authorities of the home Member State regarding institutions which operate through branches or through their freedom to provide services in other Member States, and information categories regarding branches to be provided by the competent authorities of host Member States where such branches operate, and (ii) information exchange in a liquidity stress situation to be provided by the competent authority discovering the stress situation affecting the institution operating through branches or the branches themselves.

In particular, the first part of the draft RTS specifies information categories for the topics specified in Article 50, and also supplements the minimum requirements with additional information which the EBA deems to be essential and relevant for supervisors in order to perform their tasks and safeguard financial stability, and protect depositors and investors.

The draft RTS should be read together with the accompanying draft implementing technical standards (ITS) setting out standard forms, templates and procedures (including frequency) for information exchange. The EBA publicly consulted on both RTS and ITS and did not receive any comments.

Following the requirements of Article 50(8), the EBA has submitted both technical standards to the European Commission; however, their adoption is subject to the transitional arrangements specified in Title XI, Chapter 1 of Directive 2013/36/EU.

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## 2. Background and rationale

The CRD <sup>(1)</sup> sets out the requirements for competent authorities to cooperate and exchange information regarding institutions operating through branches and freedom of provision of services and mandates the EBA to prepare draft RTS in this area.

Supervisory cooperation between competent authorities of home and host Member States is an important element for ensuring safeness and soundness of the single market and protecting the interests of depositors and investors across the Union. The importance of appropriate exchange of information and cooperation between the competent authorities supervising institutions operating through branches or through the freedom to provide services in one or more Member States has already been recognised in the earlier amendments to the CRD, which in Article 42 required competent authorities to ‘supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms’.

In 2009, the EBA’s predecessor, the Committee of European Banking Supervisors (CEBS), was asked by the Commission in a Call for Advice to specify categories of information to be exchanged between supervisors in relation to institutions operating through branches. The CEBS provided its advice in June 2009 <sup>(2)</sup>, but this has not been explicitly incorporated into the Level 1 legislation, and the CRD at that time did not specify what information should be exchanged and how it should be exchanged between the competent authorities, leaving this to national discretion and implementation.

Certain episodes of the financial crisis, however, highlighted weaknesses in the framework for exchange of information regarding institutions operating through branches, and the branches themselves. To address this significant shortcoming highlighted by the crisis, the revised CRD in Article 50 strengthens the requirements for competent authorities to cooperate and exchange information regarding institutions operating through branches. Article 50(6) also mandates the EBA to draft RTS to specify what information must be exchanged between the competent authorities.

The EBA believe that, in order to ensure efficient cooperation between competent authorities of home and host Member States, information exchange should be two-way, within the supervisory competences of those authorities. These draft RTS should, therefore, specify information concerning the institutions and, where relevant, affecting the functioning of their branches, to be provided by the competent authorities of the home Member State to the competent authorities of the host Member State, as well as information regarding the branch, to be provided by competent authorities of host Member States to the competent authorities of the home Member State.

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<sup>(1)</sup> The final text of the CRD is available at OJ L 176, 27/06/2013, p. 338, <http://new.eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2013:176:TOC>

<sup>(2)</sup> See: <http://www.eba.europa.eu/documents/10180/16106/CEBS%27s+advice+on+article+42+of+CRD.pdf>

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The draft RTS follow the structure of Article 50, and specify information to be provided by the competent authorities of home Member States concerning institutions operating through branches, including:

- ▶ information concerning management and ownership;
- ▶ information concerning liquidity and supervisory findings;
- ▶ information concerning solvency;
- ▶ information concerning deposit guarantee schemes;
- ▶ information concerning limitation of large exposures;
- ▶ information concerning internal control mechanisms.

Furthermore, the EBA proposes specifying a number of additional information categories, which are believed to be essential for supervisory purposes, in particular:

- ▶ information concerning leverage;
- ▶ information concerning general non-compliance;
- ▶ communication of supervisory measures and sanctions;
- ▶ information regarding preparation for emergency situations.

The draft regulatory standards also specify information regarding institutions to be provided to the competent authorities of host Member States where they operate through their freedom to provide services, and information regarding branches to be provided by the competent authorities of the host Member State to the competent authorities of the home Member State, as well as information to be exchanged in a liquidity stress situation.

The draft RTS build to a large extent on the reply given in 2009 by the CEBS to the Commission's Call for Advice on information exchange, and reflect best supervisory practices observed since then. Insofar as quantitative information is concerned, the draft RTS largely relate to the supervisory reporting standards developed by the EBA, thus ensuring that all information required to be exchanged between competent authorities is available to all authorities and does not lead to additional requests for information from supervised institutions. The draft RTS should be read together with the accompanying draft ITS setting out standard forms, templates and procedures for information exchange.

The EBA publicly consulted on both RTS and ITS and did not receive any comments. The EBA has submitted both technical standards to the European Commission; however, their adoption is subject to the transitional arrangements specified in Title XI, Chapter 1 of Directive 2013/36/EU.

All draft RTS are produced in accordance with Article 10 of the EBA Regulation. According to Article 10(4) of the EBA Regulation, RTS must be adopted by means of regulations or decisions.

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According to EU law, EU regulations are binding in their entirety and directly applicable in all Member States. This means that, on the date of their entry into force, they become part of the national law of the Member States and that their transposition into national law is not only unnecessary, but also prohibited by EU law, except insofar as this is expressly required by them.

Shaping these rules in the form of a regulation will ensure a level playing field by preventing diverging national practices, and will ease the cross-border provision of services.

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3. Draft regulatory technical standards on collaboration concerning supervision between the competent authorities of home and host Member States specifying the information that competent authorities shall supply to one another under Article 50(6) of Directive 2013/36/EU

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of XXX**

**supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for collaboration concerning supervision between the competent authorities of home and host Member States specifying the information that competent authorities shall supply to one another**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>3</sup>, and in particular to Article 50(6) thereof,

Whereas:

- (1) In order to ensure efficient cooperation between competent authorities of home and host Member States information exchange should be two-way, within the respective supervisory competences of those authorities. Rules should therefore specify information concerning institutions, and where relevant, affecting the functioning of their branches, to be provided by the competent authorities of the home Member State to the competent authorities of the host Member State, as well as information regarding the branch to be provided by competent authorities of host Member States to the competent authorities of the home Member State.
- (2) Exchange of information between competent authorities of home and host Member States should be seen in a wider context of supervision of cross-border banking groups and, where relevant, information could be provided at the consolidated level. In particular, should an institution have an ultimate parent undertaking in the Member State where it has its head office, and the competent authority concerned is also the

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<sup>3</sup> OJ L 176, 27.6.2013, p.338.

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consolidating supervisor, it should be possible to provide information at the consolidated level rather than at the level of an institution operating through a branch. However, in this case the competent authority should notify recipients that the information is provided at the consolidated level.

- (3) Information exchange between competent authorities of home and host Member States is not limited to the types of information specified in Article 50 of Directive 2013/36/EU, and therefore to the types of information specified in this Regulation. In particular, Directive 2013/36/EU makes separate provision for exchange of information regarding on-the-spot verification of branches, notifications of the exercise of the right of establishment and of the freedom to provide services, and measures, including precautionary measures, taken by competent authorities in relation to branches and their parent undertakings. This Regulation should therefore not specify exchange of information requirements in those areas.
- (4) Given the differences in size and complexity and significance in a host Member State where branches operate, it is important to recognise the principle of proportionality in the exchange of information. To this end, the more limited information needs of competent authorities in host Member States which are responsible for branches and compared with those which are responsible for branches identified as significant in accordance with Article 51 of Directive 2013/36/EU should be reflected in establishing a more extensive range of information to be shared with the latter than with the former.
- (5) The Regulation should also address exchange of information in relation to the carrying on of activities in a host Member State by way of the provision of services. Given the nature of cross-border services, competent authorities of host Member States have an information gap regarding operations being conducted in their jurisdictions, and covering such gap is essential for the purposes of safeguarding financial stability and monitoring conditions of authorisations, in particular monitoring whether the institution provides services in accordance with the notifications provided.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (7) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010<sup>4</sup>,

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<sup>4</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).



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HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **Subject matter**

#### *Article 1*

##### *Subject matter and scope*

1. This Regulation specifies the information that the competent authorities of host Member States and of home Member States shall supply to one another in accordance with Article 50 of Directive 2013/36/EU.
2. This Regulation concerns the information to be exchanged in relation to an institution which operates, through a branch or in exercise of the freedom to provide services, in one or more Member States other than that in which its head office is situated.
3. Where the ultimate parent undertaking of an institution is set up in the same Member State as that in which the institution has its head office, and the competent authority of the institution's home Member State is also the consolidating supervisor, that competent authority shall, where appropriate, provide information regarding an institution specified in this Regulation at the consolidated level and shall inform competent authorities of host Member States that the information is provided at that level.

## **CHAPTER II**

### **Information exchange regarding institutions operating through a branch on a going concern basis**

#### *Article 2*

##### *Information concerning management and ownership*

1. The competent authorities of the home Member State shall provide to the competent authorities of host Member States the current organisational structure of an institution including its business lines and their relationship to entities within the group.
2. In addition to information specified in paragraph 1, the competent authorities of the home Member State shall provide to the competent authorities of host Member States which supervise significant branches as referred to in Article 51 of Directive 2013/36/EU the following information in relation to an institution:
  - (a) the current structure of the management body and senior management, including the allocation of responsibility for the oversight of a branch;
  - (b) the current list of shareholders and members with qualifying holdings based on information provided by the credit institution in accordance with Article 26(1) of Directive 2013/36/EU.

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*Article 3*  
*Information concerning liquidity and supervisory findings*

1. The competent authorities of the home Member State shall provide to the competent authorities of host Member States the following information:
  - (a) any material deficiencies in an institution's liquidity risk management which are known to the competent authorities and which may affect branches, any related supervisory measures which have been taken in relation to those deficiencies, and the extent of the institution's compliance with those supervisory measures;
  - (b) the overall assessment of the competent authorities of the home Member State of an institution's liquidity risk profile and risk management, in particular in relation to a branch;
  - (c) an institution's ratios indicating its liquidity and stable funding position at the national or Union level in the domestic currency of the institution's home Member State and in all other currencies which are material for the institution;
  - (d) the components of an institution's liquidity buffer;
  - (e) the degree of asset encumbrance of the institution;
  - (f) the ratio of the institution's loans to its deposits;
  - (g) any domestic liquidity ratios that apply to an institution as a part of macro-prudential policy measures by the competent authorities or by the designated authority whether as binding requirements, guidelines, recommendations, warnings or otherwise, including the definitions of those ratios;
  - (h) any specific liquidity requirements applied in accordance with Article 105 of Directive 2013/36/EU;
  - (i) any obstacles to cash and collateral transfer to or from branches of an institution.
2. Where the competent authorities have waived in full or in part the application of Part Six of Regulation (EU) No 575/2013 to an institution in accordance with Article 8 of that Regulation, the competent authorities of the home Member State shall provide the information referred to in paragraph 1 at the sub-consolidated level or, in accordance with Article 1(3), at the consolidated level.
3. In addition to the information specified in paragraph 1, the competent authorities of the home Member State shall provide to the competent authorities of host Member States which supervise a significant branch the following information:
  - (a) the liquidity and funding policy of the institution, including descriptions of the funding arrangements for its branches, any intra-group support arrangements, and procedures for centralised cash pooling;
  - (b) the liquidity and funding contingency plans of the institution, including information on the assumed stress scenarios.

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*Article 4*  
*Information concerning solvency*

1. The competent authorities of the home Member State shall inform the competent authorities of host Member States whether an institution is compliant with each of the following requirements:
  - (a) the own fund requirements laid down in Article 92 of Regulation (EU) No 575/2013, taking into account any measures adopted or recognised in accordance with Article 458 of that Regulation and the transitional arrangements laid down in Part Ten of that Regulation;
  - (b) any additional own fund requirements imposed in accordance with Article 104 of Directive 2013/36/EU;
  - (c) the capital buffer requirements set out in Chapter 4 of Title VII of Directive 2013/36/EU.
  
2. In addition to the information specified in paragraph 1, the competent authorities of the home Member State shall provide to the competent authorities of host Member States which supervise a significant branch of an institution which is subject to own funds requirements the following information:
  - (a) the institution's Common Equity Tier 1 capital ratio, within the meaning of point (a) of Article 92(2) of Regulation (EU) No 575/2013;
  - (b) the institution's Tier 1 capital ratio, within the meaning of point (b) of Article 92(2) of Regulation (EU) No 575/2013;
  - (c) the institution's total capital ratio, within the meaning of point (c) of Article 92(2) of Regulation (EU) No 575/2013;
  - (d) the institution's total risk exposure amount, within the meaning of Article 92(3) of Regulation (EU) No 575/2013;
  - (e) the own funds requirements applicable in the home Member State in accordance with Article 92 of Regulation (EU) No 575/2013, taking into account any measures adopted or recognised in accordance with Article 458 of that Regulation and the transitional arrangements laid down in Part X of that Regulation;
  - (f) the level of the capital conservation buffer that the institution is required to maintain in accordance with Article 129 of Directive 2013/36/EU;
  - (g) the level of any institution-specific countercyclical capital buffer that the institution is required to maintain in accordance with Article 130 of Directive 2013/36/EU;
  - (h) the level of any systemic risk buffer that the institution is required to maintain in accordance with Article 133 of Directive 2013/36/EU;
  - (i) the level of any G-SII buffer or O-SII buffer that the institution is required to maintain in accordance with Article 128(3) and (4) of Directive 2013/36/EU;
  - (j) the level of any additional own funds requirements imposed in accordance with point (a) of Article 104(1) of Directive 2013/36/EU and of any other

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requirements imposed relating to an institution's solvency in accordance with that Article.

3. Where the application of part of Regulation (EU) No 575/2013 has been waived under Articles 7, 10 or 15 of that Regulation or the requirements set out in Articles 10 and 12 and Article 13(1) of Directive 2013/36/EU have been waived in accordance with Article 21 of that Directive 2013/36/EU or an institution has received permission to apply the treatment referred to in Article 9(1) of Regulation (EU) No 575/2013, the competent authorities of the home Member State shall provide the information set out in paragraph 2 at the sub-consolidated level or, in accordance with Article 1(3), at the consolidated level.

#### *Article 5*

##### *Information concerning deposit-guarantee schemes*

1. The competent authorities of the home Member State shall inform the competent authorities of host Member States of the name of the deposit-guarantee scheme to which an institution belongs in accordance with Article 3(1) of Directive 94/19/EC of the European Parliament and of the Council<sup>5</sup>.
2. The competent authorities of the home Member State shall provide to the competent authorities of host Member States the following information in relation to the deposit-guarantee scheme referred to in paragraph 1:
  - (a) the maximum coverage of the deposit-guarantee scheme per eligible depositor;
  - (b) the scope of coverage and the definition of deposits;
  - (c) any exclusion from the coverage, including products and types of depositors;
  - (d) funding arrangements of the deposit guarantee scheme, in particular whether the scheme is funded ex-ante or ex-post, and the current volume of the scheme;
  - (e) contact details of the administrator of the scheme.
3. The information in paragraph 2 is only required to be provided to the competent authorities of a host Member State once in relation to each deposit-guarantee scheme concerned. If the information changes, the competent authorities of the home Member State shall provide updated information to competent authorities of host Member States.

#### *Article 6*

##### *Information concerning limitation of large exposures*

The competent authorities of the home Member State shall provide information to the competent authorities of host Member States regarding any situation in respect of which the competent authorities of the home Member State have determined that an institution has not complied with applicable large exposures limits and requirements laid down in Part Four of Regulation (EU) No 575/2013. The information provided shall explain the situation and the supervisory measures taken or planned to be taken.

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<sup>5</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 79, 24.3.2005, p. 9).

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*Article 7*  
*Information regarding systemic risk posed by institution*

The competent authorities of the home Member State shall inform the competent authorities of host Member States where an institution has been designated as a global systemically important institution (G-SII) or as an other systemically important institution in accordance with Article 131(1) of Directive 2013/36/EU. Where the institution has been identified as a G-SII, the information provided shall include the sub-category to which it is allocated.

*Article 8*  
*Information concerning administrative and accounting procedures*

1. The competent authorities of the home Member State shall provide information to the competent authorities of host Member States regarding any situation where the competent authorities of the home Member State have determined that an institution has not complied with applicable accounting standards and procedures to which the institution is subject in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council<sup>6</sup>. The information provided shall explain the situation and the supervisory measures taken or planned to be taken.
2. Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State are only required to provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 9*  
*Information concerning internal control mechanisms*

1. The competent authorities of the home Member State shall provide information to the competent authorities of host Member States regarding any situation in respect of which the competent authorities of the home Member States have determined that an institution has inadequate internal control mechanisms, including risk management, risk control and internal audit arrangements. The information provided shall explain the situation and the supervisory measures taken or planned to be taken.
2. Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State are only required to provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 10*  
*Information concerning leverage*

1. The competent authorities of the home Member State shall provide information to the competent authorities of host Member States regarding any situation in respect of which the competent authorities of the home Member States have determined that an institution has not complied with requirements concerning leverage ratios pursuant to Part Seven of Regulation (EU) No 575/2013 and the transitional provisions in Article

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<sup>6</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

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499 of that Regulation. The information provided shall explain the situation and the supervisory measures taken or planned to be taken.

2. The competent authorities of the home Member State shall provide the competent authorities of host Member States with all information disclosed by an institution in accordance with Article 451 of Regulation (EU) No 575/2013 regarding its leverage ratio and its management of the risk of excessive leverage.

*Article 11*

*Information concerning general non-compliance*

1. The competent authorities of the home Member State shall provide information to competent authorities of host Member States regarding any situations in respect of which the competent authorities of the home Member State have determined that an institution has not complied with any national or Union laws or regulatory requirements which relate to the prudential supervision or market conduct supervision of institutions, including the requirements laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU, other than the requirements referred to in Articles 2 to 10. The information provided shall explain the situation and the supervisory measures taken or planned to be taken.
2. Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State is only required to provide the information to the competent authorities of the host Member State in which that branch is established.

*Article 12*

*Communication of supervisory measures and sanctions*

1. The competent authorities of the home Member State shall inform the competent authorities of host Member States of any of the following penalties or measures which have been imposed on or applied to an institution and which affect the operations of a branch:
  - (a) administrative penalties imposed or other administrative measures applied pursuant to Articles 64 to 67 of Directive 2013/36/EU;
  - (b) supervisory measures imposed pursuant to Articles 104 or 105 of Directive 2013/36/EU;
  - (c) criminal penalties imposed which relate to infringements of Regulation (EU) No 575/2013 or of the national provisions adopted in the implementation of Directive 2013/36/EU.
2. Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State is only required to provide the information to the competent authorities of the host Member State in which that branch is established.

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*Article 13*  
*Information regarding preparation for emergency situations*

The competent authorities of the home Member State and the competent authorities of host Member States shall exchange information regarding preparations for emergency situations. In particular they shall exchange the following:

- (a) the emergency contact details of persons within the competent authorities who are responsible for handling emergency situations;
- (b) the communication procedures that shall apply in emergency situations.

*Article 14*  
*Information from host authorities*

Without prejudice to the information exchange requirements following inspections of branches pursuant to Article 52(3) of Directive 2013/36/EU, the competent authorities of host Member States shall provide the competent authorities of the home Member State with the following information:

- (a) any situation in respect of which the competent authorities have determined that an institution has not complied with any national or Union laws or regulatory requirements which relate to the prudential supervision or market conduct supervision of institutions, including the requirements of Regulation (EU) No 575/2013 and of the national provisions adopted in the implementation of Directive 2013/36/EU together with an explanation of the supervisory measures taken or planned to be taken to address the non-compliance;
- (b) a description of any non-compliance with the conditions under which, in the interest of the general good, the activities of the branch shall be carried on in the host Member State;
- (c) any identification of systemic risk posed by the branch or its activities in the host Member State, including any assessment of the likely impact of a suspension or closure of the operations of the branch on the following:
  - (i) systemic liquidity;
  - (ii) payment systems;
  - (iii) clearing and settlement systems;
- (d) the market share of a branch where it exceeds 2% of the total market in the host Member State in either of the following categories:
  - (i) deposits;
  - (ii) loans;
- (e) any obstacles to cash and collateral transfer to or from the branch.



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## CHAPTER III

### Information exchange regarding cross-border service providers during going concern situations

#### *Article 15*

#### *Information regarding cross-border service providers*

Upon receiving a request for information from the competent authorities of a host Member State in relation to an institution which is carrying on its activities by way of the provision of services in that host Member State, the competent authorities of the home Member State shall provide the following information:

- (a) any situation in respect of which the competent authorities of the home Member State have determined that an institution has not complied with any national or Union laws or regulatory requirements which relate to the prudential supervision or market conduct supervision of institutions, including the requirements of Regulation (EU) No 575/2013 and of the national provisions adopted in the implementation of Directive 2013/36/EU, together with an explanation of the supervisory measures taken or planned to be taken to address the non-compliance;
- (b) the volume of deposits taken from residents of the host Member State;
- (c) the volume of loans provided to the residents of the host Member State;
- (d) in relation to the activities listed in Annex I to Directive 2013/36/EU which an institution has notified its wish to carry on in the host Member State by way of provision of services:
  - (i) the form in which the institution carries on the activities;
  - (ii) the activities which are the most significant in terms of the institution's activities in the host Member State;
  - (iii) confirmation whether the activities identified as core business activities in the notification provided by the institution pursuant to Article 39 of Directive 2013/36/EU are being performed by an institution.

## CHAPTER IV

### Information exchange regarding institutions operating through a branch or branch itself in liquidity stress

#### *Article 16*

#### *Scope of information exchange in liquidity stress*

1. If the competent authorities of the home Member State consider that a liquidity stress has occurred, or is reasonably expected to occur, with respect to an institution they shall immediately notify the competent authorities of host Member States and provide the information set out in paragraph 3.
2. If the competent authorities of a host Member State consider that a liquidity stress has occurred, or is reasonably expected to occur, with respect to a branch established in that Member State, they shall immediately notify the competent authorities of the home Member State and provide the information set out in paragraph 3.



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3. The information referred to in paragraphs 1 and 2 is the following:
- (a) an outline of the situation that has occurred, including the underlying cause of the stress situation, the expected impact of the liquidity stress on the institution, and developments concerning intra-group transactions;
  - (b) an explanation of the measures that have been taken or are planned to be taken, whether by the competent authorities or by the institution, including any requirements imposed upon the institution by the competent authorities to mitigate the liquidity stress;
  - (c) the results of assessments of the systemic consequences of the liquidity stress;
  - (d) the latest available quantitative information regarding liquidity specified in points (c) to (h) of Article 3(1).

## **CHAPTER V**

### **Final provisions**

#### *Article 17*

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*

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## 4. Accompanying documents

### 4.1 Cost-benefit analysis/impact assessment

#### 4.1.1 Introduction

The CRD, enacted in 2006, sets out in Article 42 that competent authorities of the Member States collaborate closely in order to supervise the activities of credit institutions operating in more than one Member States through a branch.

Responding to this, the European Commission had requested the advice of the CEBS ('the Advice') to compile an indicative list of information that would facilitate the monitoring of these credit institutions. The CEBS issued its Advice on this in 2009 and underlined the indicative nature of the topics included in the list.

Directive 2013/36/EU requires in Article 50(6) that the EBA develop draft RTS to specify the information pertaining to this topic of information exchange between supervisory authorities concerned in the monitoring of credit institutions operating in more than one Member State.

The CRD also requires that a draft ITS be prepared on this topic. The cost-benefit analysis of the ITS should be read in conjunction with this analysis, as the documents have a complementary nature.

#### 4.1.2 Current framework and procedural issues

While developing its work, the EBA considered the Advice issued by the CEBS in 2009 as a starting point for the discussions for the preparation of the draft RTS. However, the Advice of the CEBS was not binding and, therefore, not subject to the 'comply or explain' rule. After preliminary research and sharing of experience among jurisdictions, it seems that practices across countries are not harmonised, while the cooperation among supervisors is limited to 'ad hoc' requests for this kind of information exchange. These ad hoc requests imply that both the content of the information and the procedure for requesting and submitting differ among different jurisdictions. In order to get a more precise idea on the current practices in this field, the EBA conducted an extensive stocktake of topics to assess the current status and examine the expected impact, in generic terms, of this new regulation. To this end, the EBA also submitted a questionnaire to the competent authorities. The responses to the questionnaire have been taken into account in the impact assessment (IA) section of the draft RTS.

#### 4.1.3 Problem definition

The main problem that the EBA is called to contend with is the specification of the information to be notified from (i) the competent authority of the home Member State to the competent authority of the host Member State and (ii) vice versa. In both cases, the information specified can be of a periodic nature, after a specific situation has taken place or because of particular ad hoc requests.

Other topics to be specified refer to the situations where liquidity stress occurs or can reasonably be expected to occur, which are mentioned in Article 50(3) of the CRD.

The main goal of the supervisory framework is to achieve harmonisation of both the content (which is dealt with by the draft RTS) and the procedure (which is covered by the draft ITS on this topic) of information exchange. To accomplish this, the EBA has to bear in mind that the goal of every technical standard is to achieve the maximum possible harmonisation in order to achieve the objectives of the level playing field, prevent regulatory arbitrage opportunities and enhance supervisory convergence and legal clarity. In addition, provisions included in the draft RTS shall clearly specify the information that needs to be exchanged and, by doing so, reduce the burden of compliance for competent authorities in both the home and host Member States. Nevertheless the maximum harmonisation

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across the European Economic Area (EEA) does not preclude the use of ‘ad-hoc’ requests, if necessary.

#### 4.1.4 Objectives

It is important to emphasise that the draft RTS will have no costs for credit institutions, as it refers to information to be exchanged between supervisors.

The impact assessment has been carried out with the aim of ensuring that the four general objectives of the CRD are met and that negative externalities have been contained <sup>(7)</sup>. In general terms, it is deemed that the draft RTS will contribute to a better functioning of the internal market and, in that vein, will foster these general objectives. In particular, for the purpose of the forthcoming analysis, three general objectives are more relevant to the specific RTS:

- Enhance financial stability (G-1). This objective is satisfied, insofar as the draft RTS specify in detail the information to be exchanged for the collaboration between different competent authorities, thus providing the home and host authorities with a common and comparable set of information across the EEA – a tool that contributes to efficient supervision of banking groups with cross-border activities and enhances financial stability.
- Enhance safeguarding of depositor interests (G-2). The draft RTS satisfy this objective mainly in two ways: by providing regularly updated information on the situation of a banking group to competent authorities of the host country and also by providing information from home to host and vice versa after a particular event has taken place, such as supervisory measures, breaches, sanctions, etc.
- Ensure the international competitiveness of the EU banking sector (G-3). The common and standardised set of information required by the draft RTS is based as much as possible on information already available to supervisors, thus avoiding compliance costs for the banking sector.

The (specific) operational objectives that are the most relevant and addressed, implicitly or explicitly, by this impact assessment are the following:

- Prevent regulatory arbitrage opportunities (S-3). In line with the task of building up a Single Rule Book of Supervision at European level, the RTS reduce the risk of national approaches that could result in inconsistencies in the set of information required by authorities for credit institutions that operate across borders within the EEA.
- Enhance legal clarity (S-4). It is of paramount importance for the competent authorities of both the home and host Member States to rely on the provisions covering the content of information to be exchanged, thus reducing to the minimum possible level the risk of providing incomplete information.
- Reduce the compliance burden (S-5). A harmonised framework of technical standards among competent authorities in the EU will have a beneficial impact on the compliance costs sustained both by competent authorities and by credit institutions: for authorities and credit institutions, because information submissions are based as much as possible on information already available, and for credit institutions, because they are not required to submit information to different authorities.
- Enhance supervisory cooperation and convergence (S-7). Cooperation among authorities will benefit from the introduction of the draft RTS, providing more clarity on the information that is expected to be communicated from the competent authorities of the home Member State to the competent authorities of the host Member State, and vice versa, avoiding unnecessary and burdensome requests as well as delays caused by the provision of incomplete information.

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<sup>(7)</sup> 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](http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_regulation_en.pdf)).

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#### 4.1.5 Policy options: analysis and comparisons/preferred options

##### Conditions set out by the Level 1 text

A number of conditions were set out by the Level 1 text and are thus being put forward by the draft RTS as elements that comprise the baseline option. Not taking any other action to specify the additional information needed would be one of the alternative options considered (the so-called 'do nothing option').

##### i. Distinction between significant and non-significant branches

Given the differences in size and complexity of branches, it has been deemed important to take account of the principle of proportionality, and this has been done by aligning this boundary with the concept of significant branches, as defined in Article 51 of the CRD.

The stocktaking conducted among the competent authorities resulted in an inventory of what kind of information should be distributed in the case of significant branches and what information should be exchanged for non-significant branches.

##### Issues covered by the draft RTS

In addition to the issues already addressed by the Level 1 text, the draft RTS covered the issues set out below. The set of issues comprise the alternative to the 'do-nothing-option' option presented above. The net impact of this option will be presented in Section 4.1.6.

##### ii. Expansion of topics mentioned in Article 50

The CRD sets out that the information to be exchanged encompasses the following topics: management and ownership, liquidity (including stressed situations), solvency, deposit guarantee, limiting of large exposures, administrative and account procedures, and internal control mechanisms.

In addition, information has to be provided in some other cases, namely supervisory findings regarding liquidity risk management that affects a branch; non-compliance issues; supervisory measures and sanctions that affect a branch; and minimum requirements and ratios regarding leverage.

##### iii. The particular case of information on liquidity: regular information and stressed situations

While all the activities of a branch are of particular interest to the competent authorities of the host country, liquidity is probably one of the most relevant areas of interest for these authorities. In addition, one of the most salient features of the CRD is that the supervision of liquidity of branches is transferred from the competent authority of the host country to the home country. These two factors help to explain why, in the case of liquidity, more granular information is expected to be provided under the auspices of the draft RTS.

##### iv. Information from the host authorities

In some cases, it is the host authority that is the best placed to collect certain information. As cooperation between supervisors has a bilateral (as opposed to unilateral) dimension, the draft RTS take due regard of this situation and envisage the minimum information that host authorities should communicate to home supervisors.

##### v. Information to exchange in the case of services provided abroad

In addition to right of establishment (that allows credit institutions to open branches in another Member State), the institutions have the possibility of carrying on their activities in the territory of another Member State (exercise of the freedom to provide services).

The draft RTS introduce the limited scope of information to be provided regarding provisions of services relating to the content of the original passport notifications and actual activities carried on through the freedom to provide services. Quantitative information regarding volumes of loans and deposits should be provided only where such services are being provided by institutions through the freedom to provide services.

4.1.6 Cost–benefit analysis <sup>(8)</sup>

General assessment

In general terms, the responses provided by the competent authorities to the impact assessment questionnaire (“the respondents”) show that the additional elements to be introduced by the draft RTS on information exchange have a total net neutral impact, in terms of anticipated net cost, upon supervisory authorities. The total net impact has been estimated as the add-on impact on the ‘do-nothing’ option. The implementation of the new framework is anticipated to harmonise the frameworks among the jurisdictions, which in the long run is expected to create economies of scale.

For the sake of proportionality, the respondents were not asked to provide the exact monetary impact, which would be burdensome to estimate, but were asked to provide the magnitude of impact, i.e. negligible impact (= 1), low impact (= 2), medium impact (= 3) and high impact (= 4). The impact appears as a positive value on the side of benefits and as a negative value on the side of costs. Wherever the net impact (the difference in absolute values between benefits and costs) appears to be negative, it is indicated that there is a net negative (monetary) impact from the implementation of the draft RTS, whereas the net positive values indicate that there is a positive (monetary) impact from the implementation of the draft RTS.

The individual answers on the magnitude of the impact are weighted by the number of banks that have branches in other EEA countries (for home supervisors) and on the number of banks from other EEA countries that retain branches (for host supervisors). The result, after applying this weighting, is a marginally positive net impact. The cost–benefit analysis of this report has been based on the weighted results, rather than on the unweighted results, as they are more representative of the absolute magnitude at European level. Nonetheless, and for further information, the summary of the impact, according to the unweighted and weighted approaches, is shown in the following table (where 0 would be a total neutral impact).

Table 1: Unweighted and weighted magnitude of net impact for home and host supervisors and joint net impact for the draft RTS (note: net impact refers to both RTS and ITS impacts)

Unweighted impact		
Net impact for home supervisors	–0.4	Negligible negative impact
Net impact for host supervisors	0.2	Negligible positive impact
Net impact for both home and host supervisors	–0.2	<b>Negligible negative impact</b>

<sup>8</sup> The initial part of this analysis applies to both the RTS and the ITS on this subject.

<b>Weighted impact</b>		
Weighted net impact for home supervisors (weights according to number of banks per country)	-0.7	Negligible negative impact
Weighted net impact for host supervisors (weights according to number of banks per country)	0.9	Negligible positive impact
Weighted net impact for both home and host supervisors (weights according to number of banks per country)	<b>0.1</b>	<b>Negligible positive impact</b>

#### 4.1.7 Specific items assessment

With regard to specific information items as specified in the draft RTS, some conclusions have also been extracted from the questionnaire in terms of benefits and costs for home and host supervisors. The responses have also been weighed taking into account the same parameters for home and host supervisors, and considering the number of total answers associated with each information item.

In general terms, the net impact of benefits and costs has been more favourable in the case of host supervisors. This is a reasonable finding because the main costs of producing the pieces of information are borne by home supervisors. The main findings regarding benefits and costs, in order of valuation, are included below:

Table 2: Costs, benefits and net impact on specific areas of information exchange

	Benefits		Costs		Net Impact	
	Home	Host	Home	Host	Home	Host
Quantitative information regarding liquidity and solvency in addition to general compliance information	0.67	0.88	-0.96	-0.73	<b>-0.29</b>	<b>+0.15</b>
Information concerning leverage	0.45	0.72	-0.64	-0.64	<b>-0.19</b>	<b>+0.08</b>
Information regarding preparation for emergency situations	0.58	0.63	-0.64	-0.61	<b>-0.06</b>	<b>+0.03</b>
Information from host authorities	0.76	-	-0.66	-	<b>+0.10</b>	-

The two main benefits for home Member State authorities are that they can receive information from host authorities on a regular basis, and that the quantitative information (regarding liquidity and solvency, in addition to general compliance information) can be prepared in a way that reduces the workload of the home supervisor. The expenses related to the production of the package of information, albeit negligible, are cited as the main cost.

For host authorities, the main benefit is the receipt of comprehensive quantitative information on liquidity and solvency as part of a single package (as opposed to receiving – and analysing – underlying data from supervisory reporting (COREP/FINREP data). The costs relating to the receipt of this information (employing human and IT resources for the processing of the info) are also mentioned as the most relevant costs.

All in all, the net impact, when both home and host competent authorities are considered, is practically zero.

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## 4.2 Feedback on the public consultation and on the opinion of the Banking Stakeholder Group

The EBA publicly consulted on the draft proposal contained in this paper. The public consultation ran from 8 July 2013 to 8 October 2013. The EBA did not receive any responses to the consultation and the Banking Stakeholder Group did not provide any comments.