

Consultation Paper

Draft Implementing Technical Standards

On Passport Notifications under Articles 35, 36 and 39 of the proposed Capital Requirements Directive



Consultation Paper on Draft Implementing Technical Standards On Passport Notifications under Article 35, 36 and 39 of the Capital Requirements Directive

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1. Responding to this Consultation

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

Comments are most helpful if they:

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

Please send your comments to the EBA by email to EBA-CP-2013-13@eba.europa.eu by **21.08.2013**, indicating the reference 'EBA/CP/2013/13' on the subject field. Please note that comments submitted after the deadline, or sent to another e-mail address will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an e-mail message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.eba.europa.eu under the heading 'Legal Notice'.

2. Executive Summary

The proposed Capital Requirements Directive (CRD) sets out requirements concerning the exercise by credit institutions of the freedom of establishment and the freedom to provide services and mandates the EBA to develop draft implementing technical standards (ITS) in order to establish standard forms, templates and procedures for the notifications performed pursuant to Articles 35, 36 and 39 of the CRD.

These draft ITS establish procedures on the notification requirements for a credit institution while exercising the freedom of establishment (*branch notification*) and the freedom of providing services (*services notification*) as well as procedures on the interaction and cooperation between the competent authorities of the home Member State and the competent authorities of the host Member State for the purposes of such notifications. In addition, procedures covering the notification of changes in the initial branch notification are also set.

The draft ITS include also provisions addressing issues of language and means of communication for the purposes of passport notifications and require the publication of the accepted languages and means of communication from the competent authorities of the home and host Member States, as well the publication of contact details serving all possible means of communication.

The assessment of completeness of the notification submitted by a credit institution and also communication of the date of receipt of submitted – from the credit institution - and forwarded – from the home to the host authorities - notifications are required in order to ensure clarity on the receipt of a complete notification and on the exact timing of such a receipt, given the importance of these two elements for an efficient and effective process.

The harmonisation of passport notifications, through the adoption of the common templates are expected to ensure that both home and host competent authorities receive the information they require, and reduce the possibility of requests for further information. It will also ensure consistency in the forms used by the credit institutions and will facilitate their compliance with the notification requirements set by the draft regulatory technical standards, which specify the information to be notified, given that the templates have been designed in such a way that reflect the content of this information.

3. Background and rationale

In accordance with the principle of single authorisation, the decision to issue an authorisation, which is valid for the whole of the EU, shall be the sole responsibility of the competent authorities of the home Member State. A credit institution may then provide the services or perform the activities, for which it has been authorised, throughout the Community, either through the establishment of a branch or the free provision of services.

These implementing technical standards provide a framework for the cooperation of the competent authorities of home and host Member States with regard to the notifications pursuant to Articles 35, 36 and 39 of the proposed CRD, recognising the need to cooperate and exchange information to ensure an efficient passport notification process for credit institutions operating in the European Economic Area.

In addition, these implementing technical standards setting up the procedures to be followed by the credit institutions while submitting the notification for the exercise of the freedom of establishment and the freedom to provide services, and any changes in the initial branch notification.

These implementing technical standards build to a large extent on the Passporting Guidelines developed by the Committee of European Banking Supervisors (CEBS), the predecessor of EBA, and should be read along with the draft regulatory technical standards that specify the content of the passporting notifications.

The EBA has developed these ITS proposals on the basis of the legislative texts for the CRD agreed by the European Parliament and the Council in April 2013.¹ This text will be subject to legal-linguistic review before being formally adopted and the final text published in the Official Journal of the European Union. The EBA will review the ITS proposals to ensure that they take account of any changes made in the final text of the CRD.

For the finalisation of the draft ITS the EBA will also consider the responses to this consultation paper as well as any opinion of the Banking Stakeholder Group. The EBA envisages submitting the draft ITS to the European Commission by the end of this year.

¹ The CRD/CRR text as agreed by the Council can be found at <http://register.consilium.europa.eu/pdf/en/13/st07/st07746.en13.pdf>

4. Draft implementing technical standards

COMMISSION IMPLEMENTING REGULATION (EU) No .../. laying down implementing technical standards technical standards on forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services of xx.XX.2013

THE EUROPEAN COMMISSION,

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

Having regard to Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and in particular Articles 35(6), 36(6) and 39(5) thereof ,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the right of establishment and the freedom to provide services. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include certain regulatory technical standards required by Directive 2013/xx/EU in a single Regulation.
- (2) The establishment of provisions covering the language and means of communication of passport notifications from the credit institutions to the competent authorities of home and host Member States will facilitate the exercise of the freedom of establishment or the freedom to provide services and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities of home and host Member States. Publication of information on the languages and means of communication accepted ensures that the competent authorities will not bear any costs of translation of passport notifications given that it is the responsibility of the credit institution to submit passport notifications at the languages accepted by the respective authorities.
- (3) Clarity on the events that mark the start of the three month period for the decision of the competent authorities of the home Member States on the adequacy of the administrative structure and the financial situation of the credit institution and the communication of the passport

notification to the competent authority of the host Member State is necessary to ensure timely assessment of the submitted notification and transparency on the timeframe to be respected by competent authorities of home and host Member States.

- (4) The technical standards should require the assessment of the accuracy and completeness of the submitted notification from the competent authorities of the home Member States in order to clarify the responsibilities of the respective authorities and to the quality of the content of the transmitted notifications both from the credit institutions to the competent authorities of the home Member States and from the competent authorities of the home to the competent authorities of the host Member State.
- (5) Provisions requiring the competent authorities of the home Member State to indicate in what particular respects the passport notification is assessed to be incomplete or incorrect are necessary to ensure clarity in the identification and communication of the missing or incorrect elements and to facilitate the process of addressing these issues and resubmitting the information that will qualify a notification as complete and correct.
- (6) Acknowledgement of receipt of transmitted passport notification is necessary ensure clarity on the date of receipt of the relevant notification and on the time period at the disposal of the competent authorities of the host Member States, in order to prepare for the supervision of the credit institution in accordance with Chapter 4 of the Directive and, if necessary, in order to indicate general good conditions. Such a requirement also ensures clarity on the exact date on which the credit institution will be in a position to establish the branch and commence its activities in the territory of the host Member State.
- (7) Communication of general good conditions, if any, from the competent authorities of the host Member State to the competent authorities of the home Member State when these conditions are specific for the credit institution and impose restrictions in its activities is necessary to ensure transparency in relation to the activities performed by the credit institution.
- (8) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (9) 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:

TITLE I

General provisions

Article 1

Subject matter

This Regulation specifies the standard forms, templates and procedures for the notifications for the exercise of the right of establishment and the exercise of the freedom to provide services under Article 35, Article 36 and Article 39 of Directive 2013/xx/EU.

Article 2

Definitions

In this Regulation, the following definitions shall apply:

- (1) “branch passport notification” means a notification made in accordance with Article 35(1) of Directive 2013/xx/EU to the competent authorities of its home Member State by a credit institution wishing to establish a branch within the territory of another Member State;
- (2) “change of branch particulars notification” means a notification made in accordance with Article 36(3) of Directive 2013/xx/EU to the competent authorities of the home and host Member States by an institution of a change in the particulars communicated pursuant to points (b), (c) or (d) of Article 35(2) of that Directive;
- (3) “services passport notification” means a notification made in accordance with Article 39(1) of Directive 2013/xx/EU to the competent authorities of its home Member State by a credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time;
- (4) “passport notification” means a branch passport notification, a change of branch particulars notification or a services passport notification.

Article 3

Notifications and other communications

- (1) Passport notifications and other communications submitted under this Regulation shall be:

-
- (a) provided in writing in a language accepted by the competent authorities of the home Member State and in a language accepted by the competent authorities of the host Member State, or in any European Union language accepted by both the competent authorities of the home and host Member States;
 - (b) transmitted by post, or by electronic means if these are accepted by relevant competent authorities.
- (2) The competent authorities shall make the following information publicly available:
- (a) the languages in which they accept passport notifications;
 - (b) the address to which passport notifications are to be sent if submitted by post;
 - (c) any electronic means by which passport notifications may be submitted and relevant contact details.

Questions for consultation:

1. What are your views on the provisions covering the languages to which passport notifications are to be provided?
2. Do you think that passport notifications and other relevant communications shall be transmitted only via electronic means or shall the ITS allow for both options? Please explain your answer.

TITLE II

Procedures for the branch passport notification

Article 4

Submission of the branch passport notification

Credit institutions shall submit a branch passport notification using the forms in Annex 1 [Form for credit institution branch passport notifications and change of branch particulars notifications].

Article 5

Assessment of completeness and accuracy of the branch passport notification

- (1) On receipt of a branch passport notification the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided.
- (2) The three month period referred to in Article 35(3) of the Directive 2013/xx/EU starts to run on receipt of the notification containing information that is assessed to be complete and correct.

-
- (3) If the information provided is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which particular respect the information is assessed to be incomplete or incorrect.

Questions for consultation:

3. To what extent the provisions requiring check of completeness by the competent authorities of the home Member State will affect the efficiency of the process covering passport notifications?

Article 6

Communication of the branch passport notification

- (1) The competent authorities of the home Member State shall communicate a branch passport notification to the competent authorities of the host Member State using the form provided in Annex 2 [Form for the communication of the branch passport notification from the competent authorities of the home to the competent authorities of the host Member States] together with a copy of the branch passport notification and information on own funds using the form provided in Annex 3 [Template on the amount and composition of own funds and own funds requirements].
- (2) The competent authorities of the host Member State shall acknowledge receipt of the branch passport notification to the competent authorities of the home Member State without delay, stating the date on which the branch passport notification was received.
- (3) The competent authorities of the home Member State shall inform the credit institution about the communication of the branch passport notification to the competent authorities of the host Member State without delay following the acknowledgement of the receipt from the competent authorities of the host Member State. The competent authorities of the home member State shall inform the credit institution of the date on which the competent authorities of the host member State received the branch passport notification.

Article 7

Indication of general good conditions

- (1) The conditions under which, in the interest of the general good, activities may be carried on in the host Member State, if any, shall be communicated in writing by the competent authorities of the host Member State to the credit institution.
- (2) In the event these conditions impose restrictions in the activities of the branch, the competent authorities of the host Member State shall communicate in writing these conditions also to the

competent authorities of the home Member State.

TITLE III

Procedures for the change of branch particulars notification

Article 8

Submission of the change of branch particulars notification

- (1) Credit institutions shall submit a change of branch particulars notification using the forms in Annex 1 [Form for credit institution branch passport notifications and change of branch particulars notifications] unless the notification concerns the termination of the operation of the branch. Credit institutions shall only complete those parts of the form that are relevant to the changes in the particulars of the branch notification.
- (2) Credit institutions shall submit a change of branch particulars notification which concerns the termination of the operation of a branch using the form in Annex 4 [Form for credit institution notification for branch termination].

Article 9

Decision on the change of branch particulars notification and indication of general good conditions

- (1) The decision of competent authorities of the home Member State and the decision of the competent authorities of the host Member State pursuant to Articles 35(3), 36(1) and 36(3) shall be taken within the one month period provided in Article 36(3) that starts to run on receipt of the notification containing information that is assessed to be complete and correct. In this period the competent authorities of the home and host Member States shall cooperate in order to take their respective decisions.
- (2) If the information provided in a change of branch particulars notification is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which respect the information is assessed to be incomplete or incorrect.
- (3) The decision taken by the competent authorities of the home Member State on the change of branch particulars notification shall be communicated in writing to the credit institution and to the competent authorities of the host Member State.

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- (4) The competent authorities of the host Member State shall communicate in writing to the credit institution any decision setting out the conditions for the change of branch particulars notification pursuant to Article 36(1) of Directive 2013/xx/EU.
- (5) In the event that the conditions referred to in paragraph (4) impose restrictions on the activities of the branch, the competent authorities of the host Member State shall also communicate the conditions in writing to the competent authorities of the home Member State.

TITLE IV

Procedures for services passport notification

Article 10

Submission of the services passport notification

Credit institutions shall submit a services passport notification using the form in Annex 5 [Form for credit institution services passport notification].

Article 11

Assessment of completeness and accuracy of the services passport notification

- (1) The one month period provided in Article 39(2) of the Directive 2013/xx/EU starts to run on receipt of the services passport notification which contains information that is assessed to be complete and correct.
- (2) If the information provided in the services passport notification is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which respect the information is assessed to be incomplete or incorrect.

Article 12

Communication of the services passport notification

The competent authorities of the home Member State authority shall communicate a services passport notification to the competent authorities of the host Member State using the standard forms and templates provided in Annex 6 [Form for the communication of the services passport notification from the competent authorities of home Member State to the competent authorities of host Member State].

TITLE V

Final provisions

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

On behalf of the President

[Position]

**Annex 1 – Form for credit institution branch passport notifications and
change of branch particulars notifications²**

Part 1 – Contact information

Type of notification	[Branch passport notification / change of branch particulars notification]
Host Member State in which the branch is to be established:	
Name and reference number of the credit institution:	
Address of the credit institution in the host Member State from which documents may be obtained:	
Intended principal place of business in the host Member State:	
Date on which the branch intends to commence its activities:	
Name of contact person at branch:	
Telephone number:	
Fax number:	
E-mail:	

Part 2 - Programme of operations

a. *Types of business envisaged*

- 1) Description of the main objectives and business strategy of the branch and an explanation of how the branch will contribute to the institution and/or group strategy.

[to be completed by the credit institution]

- 2) Description of the target customers and counterparties
-

² Change of branch particular notifications must be notified to both the home and host competent authorities. Only the parts of the form which contain information which has changed should be completed.

[to be completed by the credit institution]

3) Envisaged banking activities (in accordance with Annex I of Directive 2013/xx/EU);

No.	Activity	Envisaged activity	Core activity	Intended start date for core activity
1.	Acceptance of deposits and other repayable funds			
2.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
3.	Financial leasing			
4.	Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market			
4.a	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.			
4b	Services enabling cash withdrawals from a payment as well as all the operations required for operating a payment account.			
4c	Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider: <ul style="list-style-type: none"> – execution of direct debits, including one-off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			

4d	Execution of payment transactions where the funds are covered by a credit line for a payment service user: <ul style="list-style-type: none"> – execution of direct debits, including one-off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			
4e	Issuing and/or acquiring of payment instruments* ¹			
4f	Money remittance			
4g	Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.			
5.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4			
6.	Guarantees and commitments			
7.	Trading for own account or for account of customers in:			
7a.	– money market instruments			
7b.	– foreign exchange			
7c.	– financial futures and options			
7d.	– exchange and interest-rate instruments			
7e.	– transferable securities			
8.	Participation in securities issues and the provision of services related to such issues			
9.	Advice to undertakings on capital structure, industrial strategy, and related questions and advice as well as services relating to mergers and the purchase of undertakings			
10.	Money broking			

11.	Portfolio management and advice			
12.	Safekeeping and administration of securities			
13.	Credit reference services			
14.	Safe custody services			
15.	Issuing electronic money			

¹ Does this activity [4g] include granting credits in accordance with the rules provided for in Article 16(3) of the Payment Services Directive?

yes no

3) Envisaged investment services and activities in accordance with Annex I to Directive 2004/64/EC

Financial Instruments	Investment services and activities								Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C1															
C2															
C3															
C4															
C5															
C6															
C7															
C8															
C9															
C10															

Note 1: Row and column headings are references to the relevant section and item numbers in Annex I to Directive 2004/64/EC on markets in financial instruments (e.g. A1 refers to point 1 of Section A of Annex I)

b. Structural organisation of the branch

-
- 1) Description of the organisational structure of the branch, including functional and legal reporting lines and the position and role of the branch within the corporate structure of the institution and, where applicable, of its group. The description may be supported by relevant documents, e.g. an organisational chart.

[to be completed by the credit institution]

- 2) Description of governance arrangements and internal control mechanisms, including:
 - a) Risk management procedures of the branch and details of liquidity risk of the institution, and where applicable, of its group

[to be completed by the credit institution]

- b) Any limits applying to the branch activities, in particular lending

[to be completed by the credit institution]

- c) Details of the internal audit arrangements of the branch, including details of the person responsible for these arrangements and, where applicable, details of the external auditor

[to be completed by the credit institution]

- d) Anti-money laundering arrangements of the branch including details of the person appointed to ensure compliance with these arrangements

[to be completed by the credit institution]

- e) Controls over outsourcing and other arrangements with third parties in connection

with the activities carried on in the branch that are covered by the institution's authorisation

[to be completed by the credit institution]

- 3) Where applicable, for investment services and activities:
- a) arrangements for safeguarding client money and assets

[to be completed by the credit institution]

- b) Arrangements for compliance with the obligations laid down in Articles 19, 21, 22, 25, 27 and 28 of Directive 2004/39/EC and measures adopted pursuant thereto by the relevant competent authorities of the host Member State ;

[to be completed by the credit institution]

- c) Internal code of conduct including controls over personal account dealing

[to be completed by the credit institution]

- d) the details of the person responsible for dealing with complaints in relation to the investment services and activities of the branch

[to be completed by the credit institution]

- e) Details of the person appointed to ensure compliance with the arrangements of the branch relating to investment services and activities

[to be completed by the credit institution]

-
- 4) Details of professional experience of the persons responsible for the management of the branch

[to be completed by the credit institution]

c. Other information

- 1) Financial plan containing forecasts for balance sheet and profit and loss accounts, covering a period of three years. Information can be also provided as an attachment to this notification.

[to be completed by the credit institution]

- 2) Name and contact details of the Union deposit guarantee and investor protection schemes, together with the maximum coverage of the investor protection scheme, of which the institution is a member and which cover the activities and services of the branch.

[to be completed by the credit institution]

- 3) Details of the branch's IT arrangements.

[to be completed by the credit institution]

**Annex 2 – Form for the communication of the branch passport notification
from the competent authorities of home Member State to the competent
authorities of the host Member State**

Competent authorities of the Home Member State:

Name of the contact Person:

Telephone Number:

Fax number:

E-mail:

Address of the competent authorities
of the host Member State

[Date]

Ref:

Dear [...],

Communication of branch passport notification

[The communication shall include at least the following information]

Name and reference number of the credit institution;

Competent authorities responsible for the authorisation and supervision
of the credit institution;

Statement on credit institution's intention to carry on activities in the
territory of the host Member State, including the date on which receipt
of complete passport notification was received;

Name and contact details of those responsible for the management of
the branch;

Union deposit guarantee and investor protection schemes;

[Signatory details]

Annex 3 - Template on the amount and composition of own funds and own funds requirements

CA1. OWN FUNDS				
Code	ID	Item	Legal references	Amount
010	1	<u>OWN FUNDS</u>	Articles 22(23) and 69 of CRR	
020	1.1	COMMON EQUITY TIER 1 CAPITAL	Article 47 of CRR	
530	1.2	ADDITIONAL TIER 1 CAPITAL	Article 58 of CRR	
750	1.3	TIER 2 CAPITAL		

CA2. OWN FUNDS REQUIREMENTS				
	Item	Label	Legal references	Amount
010	1	<u>TOTAL RISK EXPOSURE AMOUNT</u>	Articles 87(3), 90, 91 and 93 of CRR	
040	1.1	RISK WEIGHTED EXPOSURE AMOUNTS FOR CREDIT, COUNTERPARTY CREDIT AND DILUTION RISKS AND FREE DELIVERIES	Article 87(3) points (a) and (f) of CRR	
490	1.2	SETTLEMENT/DELIVERY RISK EXPOSURE AMOUNT	Articles 87(3) point (c) (ii) and 87(4) point (b) of CRR	
520	1.3	TOTAL RISK EXPOSURE AMOUNT FOR POSITION, FOREIGN EXCHANGE AND COMMODITIES RISKS	Articles 87(3) points (b) (i) and (c) (i) and (iii), and 87(4) point (b) of CRR	
590	1.4	TOTAL RISK EXPOSURE AMOUNT FOR OPERATIONAL RISK (OpR)	Article 87(3) point (e) and 87(4) point (b) of CRR	
630	1.5	ADDITIONAL RISK EXPOSURE AMOUNT DUE TO FIXED OVERHEADS	Articles 91(2) point (b), 92 and 93(1) point (a) of CRR	
640	1.6	TOTAL RISK EXPOSURE AMOUNT FOR CREDIT VALUATION ADJUSTMENT	CVA RISK	
680	1.7	TOTAL RISK EXPOSURE AMOUNT RELATED TO LARGE EXPOSURES IN THE TRADING BOOK	Articles 87(3) point (b) (ii) and 384 to 390 of CRR	
690	1.8	OTHER RISK EXPOSURE AMOUNTS		

Annex 4 – Form for credit institution notification for branch termination

Credit institution/Branch/Contact Person

Telephone number :

Fax number :

E-mail:

Address of the competent authorities of home Member State:

Address of the competent authorities of host Member State:

[Date]

[Ref:]

Dear [...]

Notification in accordance with Article 36.3 of the Directive 2013/xx/EC concerning termination of branch operation

[The communication shall include at least the following information]

Name of the credit institution

Name of the branch in the territory of the host Member State

Competent authorities responsible for the authorisation and supervision of the credit institution

Statement on credit institution's intention to terminate the operation of the branch in the territory of the host Member State and date by when the termination will be effective

Name and contact details of those responsible for the termination of branch operations

The schedule for the planned termination

Information on the process of terminating the business relations with branch customers

[Signatory details]

Annex 5 – Form for credit institution services passport notification

Part 1 – Contact information

Type of notification	Services passport notification
Host Member State in which the credit institution plans to exercise its activities:	
Name of credit institution:	
Head office address:	
Name of contact person at the credit institution:	
Telephone number:	
Fax number:	
E-mail:	

Part 2 - Intended activities

Intended activities in accordance with the Annex I to Directive 2013/xx/EU.

No.	Activity	Envisaged activity	Core activity	Intended start date for core activity
16.	Acceptance of deposits and other repayable funds			
17.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
18.	Financial leasing			
19.	Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market			
4a	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.			
4b	Services enabling cash withdrawals from a payment as well as all the operations required for operating a payment account.			

4c	<p>Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:</p> <ul style="list-style-type: none"> – execution of direct debits, including one-off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			
4d	<p>Execution of payment transactions where the funds are covered by a credit line for a payment service user:</p> <ul style="list-style-type: none"> – execution of direct debits, including one-off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			
4e	Issuing and/or acquiring of payment instruments* ¹			
4f	Money remittance			
4g	Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.			
20.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4			
21.	Guarantees and commitments			
22.	Trading for own account or for account of customers in:			
7a	– money market instruments			
7b	– foreign exchange			
7c	– financial futures and options			
7d	– exchange and interest-rate instruments			
7e	– transferable securities			

23.	Participation in securities issues and the provision of services related to such issues			
24.	Advice to undertakings on capital structure, industrial strategy, and related questions and advice as well as services relating to mergers and the purchase of undertakings			
25.	Money broking			
26.	Portfolio management and advice			
27.	Safekeeping and administration of securities			
28.	Credit reference services			
29.	Safe custody services			
30.	Issuing electronic money			

¹ Does this activity [4g] include granting credits in accordance with the rules provided for in Article 16(3) of the Payment Services Directive?

yes no

Envisaged investment services and activities in accordance with Annex I to Directive 2004/64/EC

	Investment services and activities								Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C1															
C2															
C3															
C4															
C5															
C6															
C7															
C8															
C9															

C10															
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Note 1: Row and column headings are references to the relevant section and item numbers in Annex I to Directive 2004/64/EC on markets in financial instruments (e.g. A1 refers to point 1 of Section A of Annex I)

**Annex 6 -Form for the communication of the services passport notification
from the competent authorities of home Member State to the competent
authorities of the host Member State**

Competent authorities of the Home Member State:

Name of the contact Person:

Telephone Number:

Fax number:

E-mail:

Address of the competent authorities
of the host Member State

[Date]

Ref:

Dear [...],

Communication of services passport notification

[The communication shall include at least the following information]

Name and reference number of the credit institution;

Competent authorities responsible for the authorisation and supervision of the
credit institution;

Statement on credit institution's intention to carry on activities in the territory
of the host Member State by exercising the freedom to provide services;

[Signatory details]

5. Accompanying documents

5.1 Draft Cost- Benefit Analysis / Impact Assessment

5.1.1 Introduction

CEBS Guidelines on Passporting Notifications (August 2009), were developed and agreed by CEBS members and observers recognising the need to cooperate and exchange information to ensure an efficient passport notification process for credit institutions operating in the European Economic Area. While non-binding these Guidelines represent a set of common standards already agreed on. In addition, the national supervisory authorities have gained sufficient experience in the application of the common framework to identify positive aspects as well as drawbacks and elements that could be taken into account and lead to the development of a better regulatory framework. Thus, the draft implementing technical standards build on a large extent on the existing Guidelines.

In order to assess the impact expected from the elements that are being implemented by the ITS, the draft impact assessment was performed based on a questionnaire that was developed and commented by EBA substructures in which all Member States are represented. That questionnaire tried to assess, inter alia, the level of implementation of the existing Guidelines by the national supervisory authorities, as well as the level of compliance of credit institutions with the implemented part of the guidelines.

5.1.2 Procedural issues and stakeholder consultation

While developing the draft implementing technical standards and before the publication of the consultation paper it was felt important to consult competent authorities on the policy options and the approach favoured by the draft ITS, with special focus on i) procedures to be followed from the credit institutions and the competent authorities of the home and host Member States, and ii) on the templates to be used for the purposes of the passporting notifications.

In this context, the draft impact assessment analysis is organised in four main sections:

- Level of implementation of the existing guidelines and compliance (Guidelines on Passport Notifications), with focus on the procedures and templates.
- Current supervisory framework, with focus on the number of notifications received from authorities in their capacity both as home and as host (same information as for the relevant part of the RTS on passport notifications);
- Comparison between current and future framework, with focus on expected changes as a result of the proposed implementing technical standards *only (meaning that any changes resulting from the regulatory technical standards were kept aside for the purposes of this comparison)*;
- Costs and Benefits of the draft ITS, with focus on specific policy options that have been noted as the ones from which main incremental costs and benefits are expected.

The sections below describe in detail the results from the analysis of the submitted responses for all these four areas, while they will be also taken into account for the preparation of the consultation paper on draft technical standards.

5.1.3 Level of implementation and current supervisory framework

From the responses submitted to the impact assessment questionnaire, 85% of them reported 100% level of implementation, while 15% of them reported 75% level of implementation.

5.1.4 Comparison between the current and future supervisory framework

In general, the procedures introduced by the draft implementing technical standards have been assessed as clearer and more efficient for the i) establishment of a branch, ii) changes in the initial branch notification, iii) branch termination, while as similar for the notification for the exercise of the freedom to provide services. For all these cases the templates have been assessed as clearer and more comprehensive. Section 7 provides detailed information on the policy options and solutions given to issues that have been originated as a result of the implementation of the current Guidelines and consideration of possible improvements in the current practices followed.

	Comparison with the Current Supervisory Framework	
	Procedure	Templates
Establishment	clearer	clearer
Changes	clearer	clearer
Terminations	clearer	clearer
Freedom to provide services	Similar	clearer

5.1.5 Problem definition

The main problem that the EBA is called to address is the development of procedures and templates that will be followed/used by the credit institutions and competent authorities of the home and host Member States both for the purposes of the initial passporting notifications – branch establishment and exercise of the freedom to provide services (article 35 and 39) - and for the changes in the initial notifications – only branch establishment (article 36 of CRD IV).

To accomplish this, the EBA took into account that the goal of every BTS is to achieve the maximum possible harmonisation as a mean to reach the objectives of the level playing field, the prevention of regulatory arbitrage opportunities, enhance supervisory convergence and legal clarity. In addition, developing procedures and templates that address identified problems in the current practices is expected to reduce the compliance burden of the credit institutions with the legal framework, and contribute in the efficient and effective cooperation between the supervisory authorities.

5.1.6 Objectives

The impact assessment has been carried out having in mind that the four general objectives of the CRD are met and the negative externalities have been contained³. However, for the purpose of the forthcoming analysis three general objectives are more relevant to the specific ITS:

³ 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)

- Enhance financial stability (G-1). The ITS provide a framework for a timely and efficient exchange of the relevant information concerning the establishment of a branch or the freedom to provide services, contributing in the stability of credit institutions operating cross-border.
- Enhance safeguarding of depositor interests (G-2). The ITS satisfy this objective by providing a definite procedural framework for the exchange of information concerning the intended activities abroad (including deposit taking), providing a common template of communication that provides more details both in case of initial notification and subsequent changes.
- Ensure international competitiveness of EU banking sector (G-3). The common and standardized set of procedures and templates provided in the ITS will foster the level playing field among credit institutions operating in different jurisdictions, reducing compliance costs and reinforcing their opportunity to expand in a European integrated banking sector.

The operational (specific) 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 BTS reduce the chance of national approaches that could result in longer or inconsistent procedures for the handling and transmission of passport notifications from the credit institutions to the home authorities and from the home authorities to the host authorities.
- Enhance legal clarity (S-4) – by including provisions delivering clarity on the roles and responsibilities of credit institutions and home and host authorities in the process to be followed for the purposes of passporting notifications as well as the templates to be used, it is envisaged that costs resulting from the use of inappropriate means of transmission, transmission of incomplete or unclear notifications or late communication of passporting notifications will be significantly reduced.
- Reduce compliance burden (S-5). An harmonized framework of technical standards among national authorities in the EEA will have a beneficial impact of the compliance costs sustained by credit institutions, by reducing the chance of having to comply with different rules or practices at national level;
- Enhance level playing field (S-6). An harmonized framework of technical standards among national authorities in the EEA will foster the chance for credit institutions to offer services cross-border through the establishment of a branch or through the exercise of the freedom to provide services, making the notification procedures rely on a single common mechanism implemented and binding in all jurisdictions;
- Enhance supervisory cooperation and convergence (S-7). The cooperation among home and host authorities will benefit by the introduction of the ITS, so that the exchange of information will converge to a common standard in light of the precise procedures to transmit passport notifications among the competent Authorities and the use of common templates.

5.1.7 Policy options: analysis and comparisons

The current impact assessment study considered the following policy options as being the most relevant for the draft technical standards:

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- I. Developing the Regulatory Technical Standards based on the Guidelines on Passport Notifications;
 - II. Developing the Regulatory Technical Standards from scratch, ignoring the already implemented guidelines.

In addition, the following second-order policy options were identified as the most important ones in terms of resulting incremental costs and benefits. The questionnaire was inviting competent authorities to note the three most important incremental costs and benefits and to identify the policy options from which these costs and benefits resulted.

i) Provisions requiring publication of accepted language(s) for passporting notifications

The ITS on procedure states that the notifications and other communications shall be provided “in the language of the competent authorities of the home Member State and the competent authorities of the host Member State or in any European Union language(s) accepted by the competent authorities of the home Member State and the competent authorities of the host Member State” (article 3 of the ITS on procedure).

Nevertheless, a new requirement has been added since the competent authorities shall have to make publicly available information on accepted languages and means of notification transmission (Article 3 (2) of the ITS on procedures). This provision was inserted aiming to achieve maximum harmonization in arrangements concerning languages and means of notifications among competent Authorities.

ii) Provisions requiring the assessment of accuracy and completeness of passporting notifications from the Competent Authorities of the Home Member State (Article 5 and 11 of the draft ITS)

New article 5 of the ITS on procedures “Assessment of completeness and accuracy of the passporting notification”, intends to make sure that the information submitted by the credit institution to the home Authority according to art. 35(2) CRD, as specified in the RTS, is complete and accurate, allowing the home Supervisor to receive all the mandatory elements to conduct an assessment of the request within three months after receiving the notification. At the same time, the right to provide cross-border services is guaranteed to a greater extent to the credit institution, because any additional request of information requested by the host Supervisor will not impact on the validity of the notification by the credit institution nor it will alter the two months deadline provided in Article 36 (1) CRD.

Article 11(1) of the ITS on procedures provides that the “one month period provided in Article 39(2) of the CRD shall start to run on receipt of the notification containing information [according to Article 39(1)] that is assessed to be complete and correct”. Under these terms, whenever a credit institution notifies the relevant supervisory authority of its intention to provide a particular activity abroad for the first time, the authority has the opportunity to a) check that the credit institution is authorized to carry out the activity and it actually performs it in the country of origin; b) check the consistency of the notification with the previous notifications of the same kind by the credit institution. Although indirectly, these formal checks and considerations, without posing a limit or a burden to the credit institution and the competent Authorities, may lead to a monitoring of the activities carried out abroad without an establishment and to a beneficial exchange of information among Supervisors to correct inconsistencies. The provision also partially resumes an established practice (under the current Guidelines) to notify changes to the initial notification of free provision of services, although this is not a requirement provided for in the CRD.

iii) Provisions covering the communication of passporting notification (Article 6 of the draft ITS)

Article 3 of the draft ITS on procedure sets out that the notifications and the other communications shall be transmitted by post or by electronic means, if accepted by relevant competent authorities, with acknowledgement of receipt.

The obligation to provide an acknowledgement of receipt in both cases has been added in order to be able to determine the start date of the deadline of two months mentioned in Article 26 (1) of the CRD and 36 (1) of the CRD IV (see more in depth further, at point vi).

iv) Provisions requiring the communication of conditions imposing restrictions in the services/activities of the branch to the CAs of the Home MS (Article 7(2) and Article 9(3) of the draft ITS)

The ITS now specify that the communications of conditions of general good in the host Member state with which the credit institution needs to comply in order to operate, are to be notified in general to the credit institutions only; the communication will be addressed also to the home Authority only in case the conditions represent a restriction to the intended activities abroad, thus reducing the administrative burden among Authorities.

v) Provisions establishing common standard forms and templates

The standard forms and templates have been developed as the “mirror” of the information specified under the draft RTS on passport notifications and the information to be notified, both in case of the initial notification and in case of changes in the initial notification, as required by the level 1 text. Thus it is believed that the templates will stand as a complete source of information on which the credit institutions could rely while preparing the passporting notification, while at the same time would be a useful tool for competent authorities to check completeness and accuracy of the submitted notification.

vi) Start of the two months period provided in Article 36(1) of the CRD.

The experience of the Competent Authorities has revealed that there is no clarity in the CRD about the date at which the branch may begin the activities in the host Member State. In particular, the institution and the home and the host supervisors may not use the same reference date for the two months period provided for in Article 36 (1), primarily because the date in which the notification is sent to and the date on which the notification is received by the host Authority are not necessarily the same and, secondarily, because the current procedures are not clear on how a possible request of additional information in case of incomplete notification impacts on the two months deadline for the acknowledgement.

To this end, Article 6(2) of the ITS which brings clarity on the start of the two months period referred to in Article 36 (1) of the CRD. In particular, it is stipulated that “the competent Authorities of the home Member state shall inform the credit institution about the onward communication of passporting notification to the competent Authority of the host Member state once the acknowledgement of the receipt, including the date of this receipt, pursuant to Article 3(1)(b), is delivered to the competent authorities of the home Member state”.

Under this new regime the credit institution will be able to know with certainty and clarity, the date at which the host Authority has received the notification by the home Authority; that date will be the start of the two months period referred to in Article 36(1) of the CRD.

5.1.8 Cost-benefit Analysis

(1) General assessment

In general terms the answers provided by the National Competent Authorities that answered to the IA questionnaire (“the respondents”) show that the policy options to be introduced by the ITS on procedures and templates are likely to generate incremental benefits rather than costs for all identified categories of stakeholders (competent authorities, credit institutions, any other stakeholders).

(2) Benefits

- **Competent authorities:** The analysis of the answers shows that competent authorities are considered as the stakeholders whom the draft implementing technical standards will affect the most in terms of benefits and costs. In particular, with regards to expected benefits and the main policy options on which benefits are expected, it seems that the provisions covering the establishment of common standard forms and templates is the one expected to generate significant benefits for the competent authorities, while in general benefits identified are linked to the provisions bringing more clarity and standardisation in the procedure to be followed by all directly involved stakeholders (credit institutions, competent authorities). Specific policy options that have been indicated as significant is i) provisions requiring the assessment of accuracy and completeness of passporting notifications from the competent Authorities of the Home Member State (Article 5 and 11 of the draft ITS), ii) provisions covering the communication of passporting notification (Article 6 of the draft ITS)) and iii) provisions requiring the communication of conditions imposing restrictions in the services/activities of the branch from the competent authorities of the host member state to the competent authorities of the home member state (Article 7(2) and Article 9(3)); it should be noted that the latter even though it was not frequently mentioned in terms of generating benefits, it was also not considered as generating costs.
- **Credit institutions:** The analysis of the responses shows that in the opinion of the competent authorities, credit institutions will not be particularly affected, overall, by the proposed implementing technical standards, even though both benefits and costs are expected. In general benefits are associated to more clarity in the process to be followed, as well as to the use of common forms and templates. It is also noted that answers indicated resulting benefits without linking them to any of the identified policy options, but rather to the overall implementation of the draft implementing technical standards. Specific policy options from which benefits for the credit institutions are expected are i) provisions requiring publication of accepted language(s) for the purposes of passporting notifications, ii) provisions requiring publication of accepted language(s), and iii) provisions requiring the assessment of accuracy and completeness of passporting notifications from the competent authorities of the home MS (Article 5 and 11 of the draft ITS).
- **Other stakeholders (investors, depositors, etc.):** In general the analysis of the responses indicates that competent authorities do not expect the new regulation (ITS on procedures and templates) to produce significant benefits for stakeholders other than credit institutions and competent authorities themselves. The incremental benefits that have been mostly mentioned is clearer and more efficient procedures and enhanced transparency in roles, responsibilities, means and languages of communication. The specific policy options that have mostly mentioned are i) provisions requiring publication of accepted language(s) for passporting notifications, ii) provisions establishing common standard forms and templates, and iii) provisions requiring the communication of conditions imposing restrictions in the services/activities of the branch to the CAs of the Home MS (Article 7(2) and Article 9(3) of the draft ITS).

(3) Costs

- **Competent authorities:** In general the impact assessment analysis shows that in the opinion of the respondents the new regulation (ITS on procedures and templates) is not expected to generate significant incremental costs for the competent authorities., However the main cost that was mostly mentioned is the need of competent authorities and their staff to adapt to the new procedures that will be introduced by the implementing technical standards. Specific policy options on which costs for the competent authorities are expected are i) provisions requiring the assessment of accuracy and completeness of passporting notifications from the competent authorities of the home Member State (Article 5 and 11 of the draft ITS) ii) provisions requiring publication of accepted language(s) for passporting notifications, and iii) provisions requiring the communication of conditions imposing restrictions in the services/activities of the branch to the CAs of the Home MS (Article 7(2) and Article 9(3)), it is also noted provisions establishing common standard forms and templates) was not generally considered as a possible source of incremental costs.
- **Credit institutions:** Incremental costs are in general associated with a more detailed process to be followed for the passport notifications, as well as with more detailed templates. Main policy options from which costs are expected for the credit institutions are i) provisions establishing common standard forms and templates, and ii) provisions requiring publication of accepted language(s) for passporting notifications, even though it is expected that it is the requirement to submit passporting notifications on the specified languages, rather than the publication of the accepted languages that generates costs for the credit institutions,.
- **Other stakeholders:** None of the options considered is mentioned by the competent authorities as a source of incremental costs for the other stakeholders.

5.2 Overview of questions for Consultation

1. What are your views on the provisions covering the languages to which passport notifications are to be provided?
2. Do you think that passport notifications and other relevant communications shall be transmitted only via electronic means or shall the ITS allow for both options? Please explain your answer.
3. To what extent the provisions requiring check of completeness by the competent authorities of the home Member State will affect the efficiency of the process covering passport notifications?