



EBA REPORT ON THE PEER REVIEW OF THE RTS ON PASSPORT NOTIFICATIONS

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Executive summary

One of the goals of Directive 2013/36/EU (the CRD) is to ensure due observance of the right of establishment and the freedom to provide services for credit institutions within the EU. The CRD mandates the EBA to develop draft regulatory technical standards (RTS) to specify the information to be notified and implementing technical standards (ITS) to establish forms, templates and procedures for such notifications in accordance with Articles 35, 36 and 39.

Under the CRD, credit institutions have to submit the required information to their home competent authorities (CAs) before starting/taking up their activities in the host Member State. Depending on the type of notification, the information to provide to the home CA may vary. On 4 June 2014, the European Commission published Commission Delegated Regulation (EU) No 1151/2014 (the RTS) on the information to be notified when exercising the right of establishment and the freedom to provide services, and, on 27 August 2014, the European Commission published Commission Implementing Regulation (EU) No 926/2014 (the ITS) with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services. When credit institutions want to establish a branch within the territory of another Member State, they have to provide the required information relating to branch passport notifications, as stated in Article 3 of the RTS. If the credit institutions have to change any particulars of the initial notification, they have to submit a change in branch particulars notification to the CAs of both the home and host Member States (Article 4 of the RTS). If credit institutions want to exercise the freedom to provide services by carrying out their activities within the territory of another Member State for the first time, they also need to notify the home CAs in accordance with Article 5 of the RTS.

This peer review looks at all the notifications included in Articles 35-39 CRD and provided by credit institutions from 1 July 2016 to 30 June 2017. It assesses CAs' practices on how they manage the passporting process and the cooperation arrangements between home and host CAs. It specifically evaluates how CAs deal with mandatory information from credit institutions. This peer review focuses on the quality assurance process and pays particular attention to how CAs manage timeliness to handle credit institutions' information and assess completeness and granularity of this information. The review also seeks to assess the level of cooperation reached between home and host CAs.

The peer review shows that CAs have developed consistent and robust procedures to comply with the RTS requirements. However, the level of sophistication of these processes varies among CAs. The Review Panel has identified best practices, the dissemination of which might be beneficial for CAs.

The area where the Review Panel saw inconsistencies in practices concerns the cooperation between CAs when dealing with branch or services passport notifications. The exchange of information, its timing and the granularity of transmitted information are not always consistent

among CAs. In the context of Brexit and for the sake of convergence of practices in the single market, it may be worth establishing better cooperation channels as well as developing more meaningful interactions between CAs. The Review Panel has identified some possible best practices in this regard. In addition, CAs raised their concerns about the practical application of proportionality. Given that the RTS/ITS on passport notifications impose full harmonisation, CAs take the view that the framework does not offer any ability to develop internal procedures to factor in proportionality with regard to passporting. However, it might be possible to introduce proportionality into the operational arrangements for the analysis of notifications and additional interaction between home and host authorities, which is suggested in the possible best practices identified in this report.

CAs were also requested to provide their views on how to improve the granularity of information contained in both the RTS and ITS. Although there was a high level of consensus about the suitability of the current RTS and ITS requirements on the detail of the information required for credit institutions, CAs provided ideas on how to expand the level of details to be requested to credit institutions. Notably, some CAs considered that further clarifications should be introduced to better reflect the interlinkages between the ITS and the RTS with other pieces of legislation dealing with passporting (e.g. MiFID¹, PSD² and MCD³).

Overall, CAs consider that the passporting processes are efficient enough to ensure timely sharing of information between home and host CAs. They have provided some ideas on how to improve the cooperation between CAs as well as to smooth the passport notifications procedures, should the EBA wish to review the RTS and ITS or provide additional operational guidance.

¹ Markets in Financial Instruments Directive (MiFID) (2004/39/EC): the directive is a cornerstone of the EU's regulation of financial markets, seeking to improve their competitiveness by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments.

² Payment Services Directive (PSD) (2015/2366/EU): the directive provides the legal foundation for the further development of a better-integrated internal market for electronic payments within the EU.

³ Mortgage Credit Directive (MCD) (2014/17/EU): the directive aims to ensure that all consumers who take out a mortgage to purchase a property are adequately informed about and protected against the risks.

1. Background and rationale

1.1. Introduction

This Final Peer Review Report presents a summary of the results of the self-assessment by CAs of how they implement the Guidelines on passport notifications. It also releases the main results of the review by peers, including possible good practices identified through the desk-based analysis.

1.2. Mandate

The purpose of this peer review is to assess how home CAs apply the RTS and more precisely how they share information arising from credit institutions' passport notifications. The peer review therefore assesses how CAs collect mandatory information from credit institutions, should they plan to establish a branch, carry out new services and activities in another Member State, or change the particulars of a branch passport notification, or how they deal with notifications related to the exercise of the right of establishment and the freedom to provide services.

In accordance with the terms of reference of the peer review approved by the EBA's Board of Supervisors (BoS) in September 2017, the peer review also considers:

- whether or not CAs of home Member States are satisfied they are receiving sufficient information included in the RTS, from both quantitative and qualitative perspectives, and whether or not this information enables them to assess the adequacy of the administrative structure or the financial situation of credit institutions (Article 35(3) of the CRD);
- whether or not CAs of host Member States are satisfied they are receiving sufficient information, enabling them to produce the necessary arrangements to prepare for the supervision of the credit institutions (Article 36(1) of the CRD);
- in addition to the quality and the quantity of the information received, best practices of the CAs of the home Member States and the degree of cooperation and engagement between CAs and credit institutions for the purpose of facilitating the information in the RTS; and
- whether or not the approach of CAs to obtaining the information in the RTS is convergent.

While not directly within the scope of the RTS, Article 36 of the CRD requires host CAs to prepare for the supervision of the branch before the commencement of its activities and, if necessary, indicate the conditions under which, in the interest of the general good, those activities should be carried out in the host Member State. Such conditions should be communicated to the institution and home CA in accordance with Article 7 of the ITS. In the interest of understanding CAs' practices in exercising the possibility to impose certain conditions/restrictions, the BoS agreed that the Review Panel should collect information regarding impositions of such conditions/restrictions as part of the preparation for the commencement of the activities. Indeed, it would contribute to the

overall understanding of supervisory practices in a cross-border context following passport notifications.

Lastly, and although not strictly included in the scope of the RTS, this peer review also assesses the suitability of the ITS for the purpose of information request and sharing.

The RTS constitute the basis on which the peer review is undertaken. Consequently, CAs have been assessed against the whole provisions of these RTS, including:

- Article 3 – Branch passport notification;
- Article 4 – Change in branch particulars and notification of termination of operation of a branch;
- Article 5 – Services passport notification.

At the end of the exercise, it is expected that the Review Panel will be able to:

- issue a report with a description and comparison of supervisory approaches and compliance of the same with regards to the RTS;
- identify best practices for supervisors; and
- express an opinion on the adequacy of the current RTS and the potential areas for improvement.

All of the 28 voting members of the EBA's BoS, the Single Supervisory Mechanism (ECB/SSM) and also the observers at the EBA's BoS from the EEA countries (IS, LI, NO) are subject to this peer review. A complete list of the CAs that participate in the peer review is in Annex 1.

In the euro area, the ECB/SSM and CAs have split the passporting-related tasks between them. ECB/SSM is responsible for monitoring the passporting procedures through its information technology (IT) tool Information Management System (IMAS), assessing if the requirements applicable to the significant institutions within or outside the SSM are met, notifying the host CAs of the passporting branch and of the outgoing services, and proposing decisions to oppose the establishment of the branch, where relevant. Although the ECB/SSM is ultimately responsible for all passporting tasks related to significant institutions (SIs), some of the procedures are delegated to CAs, for example collection of notifications from banks, initial assessment of the completeness of the notifications, or communication of services notifications or notifications about the changes of branch particulars to host CAs within the SSM. However, the ECB/SSM is not responsible for informing the supervised entity about the conditions under which, under national law in the interest of the general good, activities can be carried out. The responses provided by the ECB/SSM have been assessed according to this distribution of tasks. For further details on the ECB/SSM tasks, please see Annex 4.

1.3. Reference to the EBA Founding Regulation

The Review Panel conducts independent peer reviews based on self-assessments provided by CAs.

Peer review exercises are conducted in accordance with the provisions of Article 30 of the EBA Founding Regulation and the EBA decision establishing the Review Panel (EBA DC 035). A peer review entails an assessment and comparison of the effectiveness of the supervisory activities and of the implementation of the provisions by CAs vis-à-vis those of their peers. The peer reviews shall include an assessment of:

- the adequacy of resources and governance arrangements of CAs, especially regarding the application of regulatory technical standards and implementing technical standards;
- the degree of convergence reached in the application of Union law and in supervisory practices;
- the best practices developed by CAs.

At the end of the peer review, the EBA is entitled to submit an opinion to the European Commission where the peer review or any other information acquired in carrying out its tasks shows that a legislative initiative is necessary to ensure further harmonisation of prudential rules (Article 30(3)(a) of the EBA Regulation). The EBA also has to make publicly available the best practices that can be identified from the peer review. In addition, all other results of the peer review may be disclosed publicly, subject to the agreement of the CA that is the subject of the peer review (Article 30(4) of the EBA Regulation).

1.4. Methodology

The peer review followed the [EBA Review Panel methodology for the conduct of peer reviews \(EBA BoS 2012 107\)](#) approved in June 2012. In line with the methodology, each peer review has four phases:

- Phase 1 – preparatory
 - Preparation and finalisation of a self-assessment questionnaire (SAQ).
- Phase 2 – self-assessment
 - CAs are asked to submit their initial SAQ.
- Phase 3 – review by peers
 - The Review Panel considers the questions, self-assessments and benchmarks, revising them as necessary in order to promote consistency of responses across CAs.
- Phase 4 – on-site visits
 - Small teams visit a number of CAs.

According to the Review Panel Methodology, the EBA is expected to establish a benchmark to facilitate a transparent and objective evaluation of to what degree each CA is effectively implementing the respective supervisory provisions or practices subject to peer review and to what degree intended supervisory outcomes are being achieved. Furthermore, the methodology seeks that the benchmark be clearly set out at the beginning of each exercise. In so doing, the EBA has to use a specific grade scale ranging from ‘fully applied’ to ‘not applied’, including two additional categories, ‘not applicable’ and ‘non-contributing’, and depending on the level of compliance reached by each CA. For this peer review, Review Panel members agreed to use a different set of benchmarking criteria, as the peer review dealt with the RTS on passport notifications. The RTS requires full harmonisation and compliance with its provisions. Consequently, the benchmarking criteria have been defined as follows:

- **Fully comprehensive process:** A practice may be considered to be ‘fully comprehensive’ when all assessment criteria as specified in the benchmarks are met without any significant deficiencies.
- **Largely comprehensive process:** A practice may be considered to be ‘largely comprehensive’ when some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.
- **Partially comprehensive process:** A practice may be considered to be ‘partially comprehensive’ when some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.
- **Weak process:** A practice may be considered to be ‘weak’ when the assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision.
- **Not applicable:** A practice under review may be considered ‘not applicable’ when it does not apply given the nature of a competent authority’s market.
- **Non-contributing:** A competent authority shall be classified as ‘non-contributing’ if it has not provided its contribution within the prescribed deadline.

Given the nature of the topic, the Review Panel considered that there was very little benefit in conducting on-site visits. Therefore, the Review Panel cut off the fourth phase of the methodology in relation to this particular exercise.

2. Summary of the findings of the self-assessment questionnaire

Most CAs participating in the peer review exercise confirmed their strict application of the RTS. The SAQ contained three benchmarked questions focusing on completeness and tracking of information received by home CAs, granularity of information received by home CAs, and use of information by host CAs. CAs indicated, in their responses, that they applied either comprehensively or largely most of the requirements of the benchmarked questions.

One CA indicated that no branches operated in its jurisdiction, while another CA did not provide a response (please see Figure 1).

Table 1: Summary table of all competent authorities' benchmarked responses before review

	Number of responses – fully comprehensive process	Number of responses – largely comprehensive process	Number of responses – partially comprehensive process	Number of responses – weak process	Number of responses – Not Applicable (N/A)	Number of responses – non-contributing	Total
AT	3	0	0	0	0	0	3
BE	1	2	0	0	0	0	3
BG	3	0	0	0	0	0	3
CY	3	0	0	0	0	0	3
CZ	3	0	0	0	0	0	3
DE	3	0	0	0	0	0	3
DK	1	2	0	0	0	0	3
ECB	3	0	0	0	0	0	3
EE	3	0	0	0	0	0	3
EL	3	0	0	0	0	0	3
ES	3	0	0	0	0	0	3
FI	2	1	0	0	0	0	3
FR	3	0	0	0	0	0	3
HR	2	1	0	0	0	0	3
HU	3	0	0	0	0	0	3
IE	2	1	0	0	0	0	3
IS	2	0	0	0	0	0	2
IT	3	0	0	0	0	0	3
LI	3	0	0	0	0	0	3
LT	2	1	0	0	0	0	3

LU	2	1	0	0	0	0	3
LV	3	0	0	0	0	0	3
MT	0	0	0	0	0	3	3
NL	2	1	0	0	0	0	3
NO	1	0	2	0	0	0	3
PL	2	1	0	0	0	0	3
PT	3	0	0	0	0	0	3
RO	3	0	0	0	0	0	3
SE	0	1	2	0	0	0	3
SI	3	0	0	0	0	0	3
SK	1	2	0	0	0	0	3
UK	3	0	0	0	0	0	3
Tot.	74	14	4	0	0	3	95

Annex 2 gives a detailed summary of all self-assessments across all respondents. It can be concluded that in general all CAs apply the requirements of the RTS properly. With regard to the benchmarked elements of the passporting procedure, namely the check of completeness and granularity of the information notified to home CAs and the cooperation between home and host CAs, the preliminary analysis did not identify any major outliers. The analysis of the responses are provided in section 3.

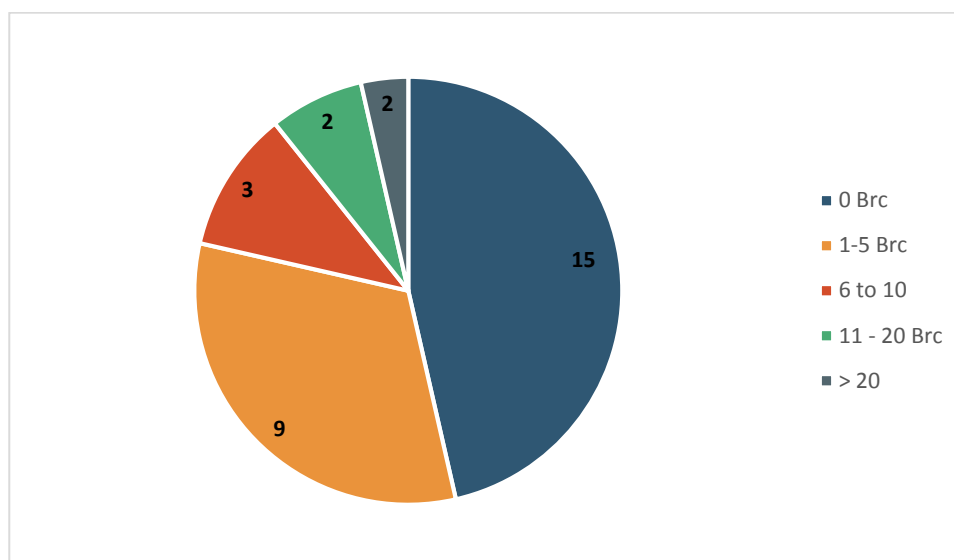
3. Outcomes of the data collection exercise and the review of the benchmarked questions of the self-assessment questionnaire

3.1. Findings of the data collection exercise

Review Panel members agreed to include a short data collection focusing on the number of notifications received about the establishment of new branches and about the services provided by credit institutions located in another Member State (see the questions included in the self-assessment questionnaire in Annex 3).

Question 1 refers to the number of notifications home CAs have received about the establishment of new branches and about the services provided by credit institutions located in another Member State. In general, CAs received more notifications about the services provided in another Member State than about the establishment of a new branch. In certain jurisdictions, the difference between branch passport notifications and services passport notifications may be high. The highest ratio between the two values is more than 20 to 1. Fifteen CAs specified that they had received notifications only about services, and none about the establishment of new services (Figure 1). Eight CAs received fewer than 5 notifications for branches, but, at the same time, five of them recorded more than 20 services passport notifications. During the reference period, only two CAs received more than 10 branch passport notifications. Those two CAs also collected the highest number of services passport notifications, reflecting the size of their financial markets.

Figure 1 Notifications received by home CAs about the establishment of new branches



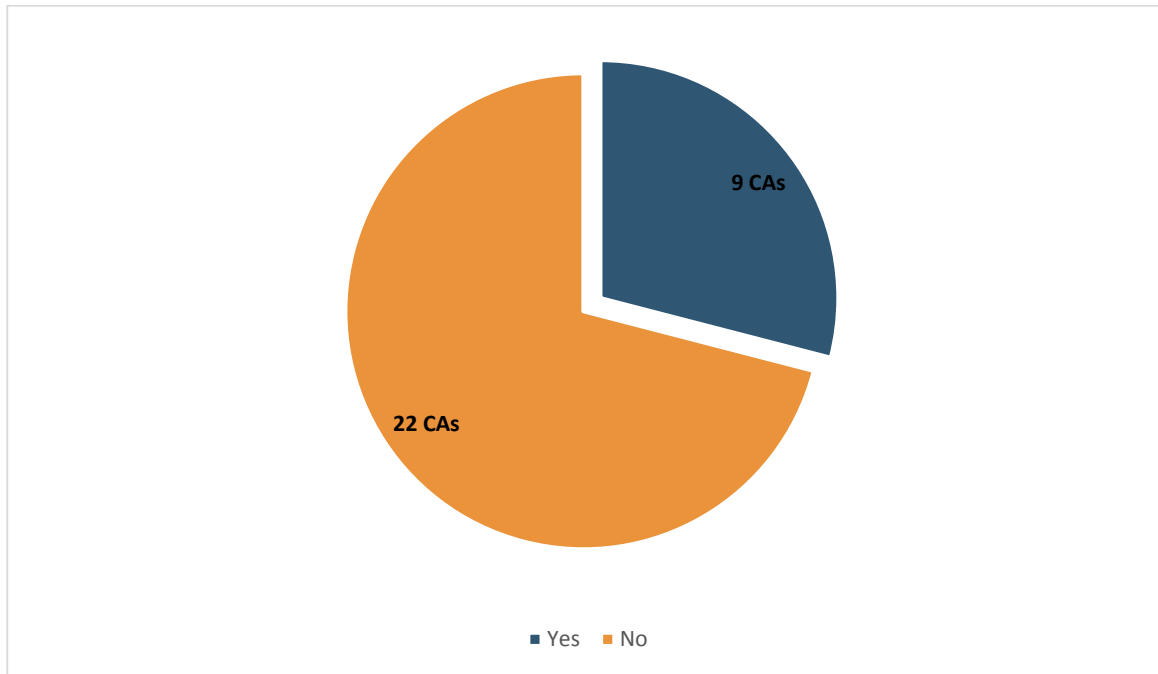
Question 1 also seeks to develop an understanding of the situation in SSM countries. SSM CAs were requested to provide the number of notifications received for the establishment of a new branch and shared with the ECB/SSM⁴. Amongst 19 SSM countries, only six CAs sent notifications to the ECB/SSM during the reference period. The distribution of notifications within the SSM looks uneven, as one CA shared a large number of notifications (15), while the five other CAs sent fewer than 3 notifications.

With regard to notifications related to freedom to provide services for significant institutions, 16 CAs sent notifications to the ECB/SSM. The results range from 1 notification shared to 54 notifications. Four CAs shared more than 20 notifications about freedom of services with the ECB/SSM. Ten CAs sent fewer than five notifications during the reference period and two of them did not send any notifications. These findings show not only the differences in the size of the national financial markets across the EU, but also the intense cross-border activity of some Member States, despite the small size of their markets.

Question 2 aims to understand if some CAs apply additional requirements from a specific national law in addition to those in the RTS. The Review Panel did not get consistent information from all CAs. However, it appears that the additional requirements that CAs apply in line with their national law are broadly consistent with the RTS requirements. Among the most common additional requirements applied on top of the RTS requirements, it is worth noting that some CAs ask for a detailed description of the cross-border services, including for example (i) detailed information on the planned activities to be provided in the host Member State as well as the management of the risks that these activities may trigger, (ii) a thorough 3-year business plan and (iii) detailed information on the internal control system, outsourcing arrangements and compliance with the host Member State framework (see Figure 2).

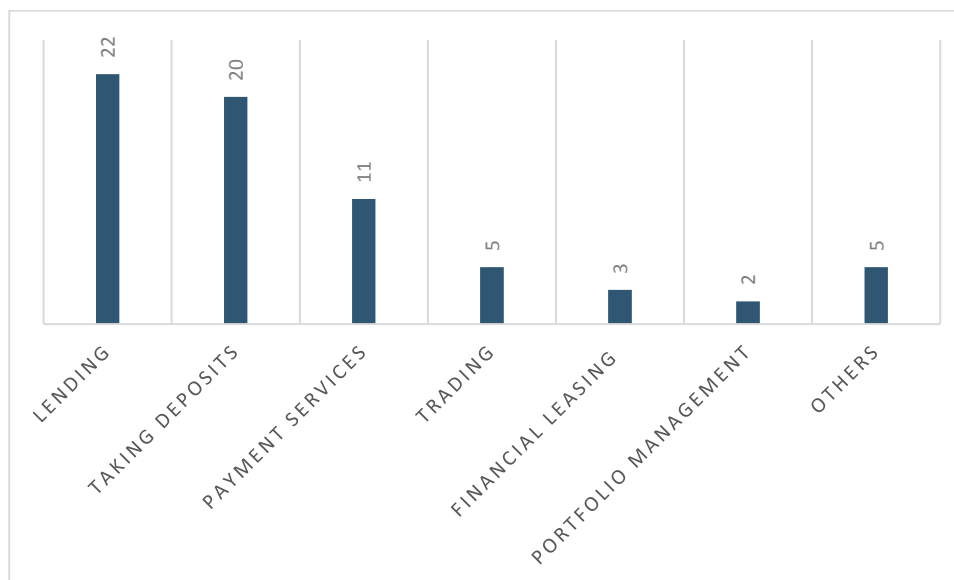
⁴ The figures provided by CAs relate only to significant institutions.

Figure 2: Additional requirements arising from the national law that CAs apply⁵



The next two questions are not directly linked to the application of the RTS, but they enable the Review Panel to get a better understanding of the activities undertaken by branches in the EU. Question 3 assesses the most common activities carried out by the branches authorised in the jurisdictions of host CAs.

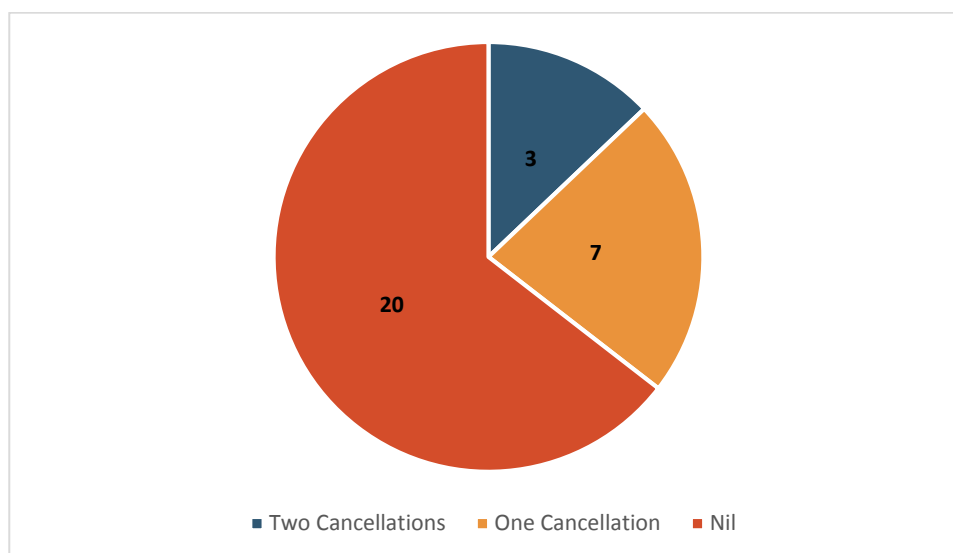
⁵ This chart indicates the number of CAs applying additional requirements from the national law in addition to the RTS ones. 'Yes' means that CAs apply additional requirements; 'No' refers to CAs that do not apply such requirements.

Figure 3 Branches' most common activities⁶

As can be seen from Figure 3, the most common activities are concentrated within the core banking activities, lending (71%) and taking deposits (65%). Other activities feature the special characteristics of any given EU Member State within the banking sector. For instance, one CA highlighted trading as an important activity, while another one flagged safekeeping and administration of securities.

The ongoing consolidation in the EU banking sector affects the number of branches, which has shrunk since the onset of the financial crisis. In this regard, Question 4 seeks to assess how many subsidiaries cancelled their authorisation and transferred the majority of their business to a branch. There has been hardly any noticeable cancellation activity on authorisation of branches during the reference period (Figure 4). Indeed, 20 CAs did not report any cancellation. Seven CAs reported one cancellation and only three CAs reported two cancellations, excluding the ECB/SSM.

⁶ The list of activities subject to mutual recognition is in Annex 1 of the CRD. The graph reveals the most common activities undertaken by branches. In accordance with Annex 1 of the CRD, 'trading' means trading for own account or for account of customers on any of the following: (a) money market instruments, (b) foreign exchange, (c) financial features and options, (d) exchange and interest-rate instruments and (e) transferable securities. Under 'others', the list of activities contains guarantees and commitments, participation in securities issues and the position of services relating to such issues, money broking, safekeeping and administration of securities, credit reference services, safe custody services, issuance of electronic money and 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.

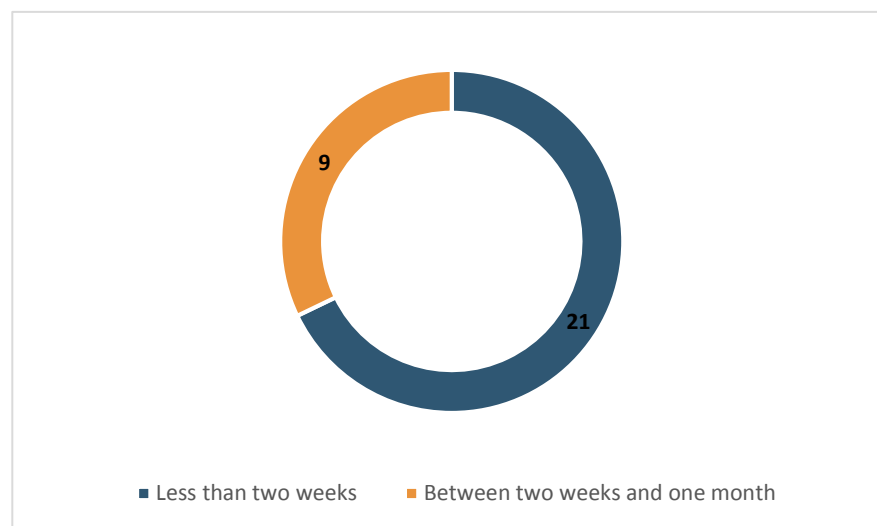
Figure 4 Cancellation of authorisations⁷

Question 5 seeks to understand if CAs provide additional guidance⁸ on how institutions should comply with their information requirements in the context of passport notifications. In this area, there were limited practices developed by CAs regarding the provision of additional information of guidance, other than the applicable RTS. However, eight CAs reported the existence of this type of additional guidance mostly by way of publication on their websites, noting that this additional guidance may be embedded in the regulation, itself published on the CAs' websites. This guidance can be timely assistance in order to help the institution to provide a better and more complete/tailored set of information taking into account their specific situations. Besides, some CAs also have other, less formal, types of guidance such as structured dialogue with the managers. In that particular case, experience showed that direct dialogue helps keep the procedure simple and improves the quality and comprehensibility of the notification. The CAs in general consider that issuing/providing this kind of operational guidance has some merit.

Question 6 addresses the length of the process for home CAs to liaise with institutions should some of the information required be missing or inconsistent. Most of the CAs have adopted the practice of communicating swiftly with credit institutions for additional information when their notifications are not complete or show some inconsistencies. Nineteen CAs were able to contact credit institutions in less than 2 weeks on average, while nine needed a period from 2 weeks to 1 month (Figure 5). There were no reports of CAs requiring more than 1 month to communicate with credit institutions.

⁷ This chart shows the number of CAs reporting no, one or two cancellations, noting that MT did not provide its SAQ and the EBC/SSM is not responsible for that type of activity. Therefore, only 30 CAs were included in this pie chart.

⁸ 'Additional guidance' means the issuance of explanatory note or informal guidance whose aim is to clarify the process set in the RTS.

Figure 5 Timeframe to request additional information (on average)⁹

3.2. Assessment of passport notifications by home CA

3.2.1. Tracking of notifications by CAs

The SAQ contains three questions on the tools and practices used by home and/or host CAs to keep track of notifications. For the sake of completeness, they have been analysed in this part of the report¹⁰.

Question 7 checks if home CAs are able to track the information received. Most CAs keep track of notifications received through an internal system or database.

Question 16 seeks to understand if host CAs keep track of all passport notifications received and maintain the repository of credit institutions allowed to establish branches or provide services in their jurisdiction.

All but one CA keep track of all passport notifications received and most of them publish the information on their websites. Some CAs have a dedicated register. In a few cases, the process is less sophisticated: CAs record the passport notification on an Excel spreadsheet which is then made public. In the case of the ECB/SSM, all passport notifications submitted to the ECB are stored in a

⁹ The chart indicates the timeframe needed for CAs to liaise with credit institutions should some information be missing or incomplete. Please note that IS reported that it had not received any branch passport notification in the reference period and DK had not received any incomplete notifications.

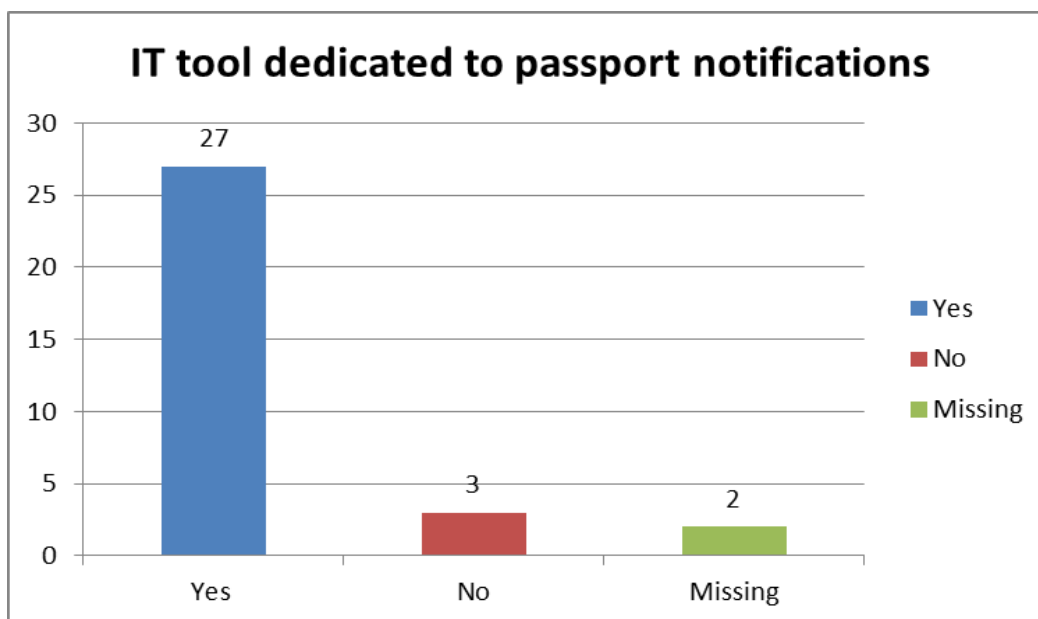
¹⁰ Questions 7, 16 and 23 deal with the tracking of all passport notifications received and maintaining the repository of credit institutions allowed to establish branches or provide services in the CA's jurisdiction (Questions 7 and 16) and with IT tools to keep track of any notifications received by home/host CAs (Question 23).

dedicated repository, called IMAS. IMAS is a bespoke application supporting the processes of supervision in the SSM¹¹.

The information kept in this repository is not available publicly, but some of the information might be disclosed publicly by the CAs. Some CAs also provided information on the updating of the register. It appears that CAs usually update the register regularly, and in a few cases daily.

Question 23 focuses on the IT tools in place to deal with the notification procedure and keep track of any notifications received. The survey showed a large variety of answers, ranging from a dedicated and structured IT application (either developed internally or based on commercial software), which allows the insertion of internal deadlines to the persons who will proceed the notification and assessment process, through the use of registers, partially public or not, and Excel spreadsheets to Windows Repository. Three CAs reported that such IT tools were not in use in their institutions (Figure 6).

Figure 6: IT tool dedicated to dealing with passport notifications



- ⇒ **Possible best practice:** Although the practice of tracking passport notifications is widespread across the EU, the Review Panel encourages home CAs to improve practices to keep track of all passport notifications. CAs receiving a sizable amount of notifications may consider developing/implementing IT systems that would show all cases, finalised or pending, as well as timeframes and open issues. The Review Panel also encourages CAs to

¹¹ This tool is used by both supervisors working within the ECB and supervisors working at national competent authorities (NCAs) and national central banks (NCBs). IMAS includes many modules (SREP, ID Card, planner, significance assessment, risk mitigation program and authorisations module). In the authorisations module, NCAs store in IMAS the documentation needed for the assessment of the passporting procedures, and the ECB coordinates the information flows via IMAS. This tool allows all passporting procedures for SIs and LSIs in the SSM to be tracked.

keep and publish a register of the EU banks operating on the basis of passport notifications¹².

3.2.2. Completeness

The first part of the SAQ seeks to assess how home CAs deal with quality assurance of information received. Question 7 is the first benchmarked question¹³. In the SAQ, 29 CAs considered that they applied a ‘fully comprehensive process’, while one CA deemed that its process was ‘largely comprehensive’ and another one viewed its process as ‘partially comprehensive’ (Table 2).

Table 2: Summary table of competent authorities’ benchmarked responses (Q7)

MS	Assessment	MS	Assessment
AT	Fully comprehensive process	IS	Fully comprehensive process
BE	Fully comprehensive process	IT	Fully comprehensive process
BG	Fully comprehensive process	LI	Fully comprehensive process
CY	Fully comprehensive process	LT	Fully comprehensive process
CZ	Fully comprehensive process	LU	Fully comprehensive process
DE	Fully comprehensive process	LV	Fully comprehensive process
DK	Largely comprehensive process	MT	Non-contributing
ECB	Fully comprehensive process	NL	Fully comprehensive process
EE	Fully comprehensive process	NO	Fully comprehensive process
EL	Fully comprehensive process	PL	Fully comprehensive process
ES	Fully comprehensive process	PT	Fully comprehensive process
FI	Fully comprehensive process	RO	Fully comprehensive process
FR	Fully comprehensive process	SE	Partially comprehensive process
HR	Fully comprehensive process	SI	Fully comprehensive process
HU	Fully comprehensive process	SK	Fully comprehensive process

¹² From the ECB/SSM perspective, the current processes within the SSM are not totally satisfactory. The passporting-related tasks involve multiple interactions with many stakeholders (ECB/SSM and CAs). The majority of interactions take place within the SSM and are not automated, which leads to many manual interventions, causing inefficiencies and increasing the risk of delays and errors. It also triggers a high workload for CAs, which might delay the treatment of the procedures. In order to simplify the current process, a centralised repository for all passporting procedures could be considered, including automatic notifications replacing all manual interventions within SSM. This repository would have several benefits. The common platform would lead to a simplification of the process by reducing the information flow between the parties involved. The platform would also allow efficiency gains, given that the status of the notification and documentation required for the assessment will be available for all stakeholders at the same time. In addition, it would also support the coordination of the passporting procedures.

¹³ With regard to the completeness and tracking of information received, please specify if your CA, acting as a home Authority. Benchmarking criteria: i) checks that all the forms attached in the ITS (Annexes 1, 4 and 5) or any other additional forms are fully filled out, ii) checks that all the information which should be provided by credit institutions matches the information required by Articles 3, 4 and 5 of the RTS, iii) checks that the information provided is detailed enough to enable your CA to assess the adequacy to carry out the activities envisaged in the territory of another Member State as specified in recital 1 of the RTS, iv) records and monitors all the notifications received. [fully comprehensive process: 4 criteria/largely comprehensive process: 3 criteria/partially comprehensive process: 2 criteria/weak process: 0-1 criterion].

IE	Fully comprehensive process	UK	Fully comprehensive process
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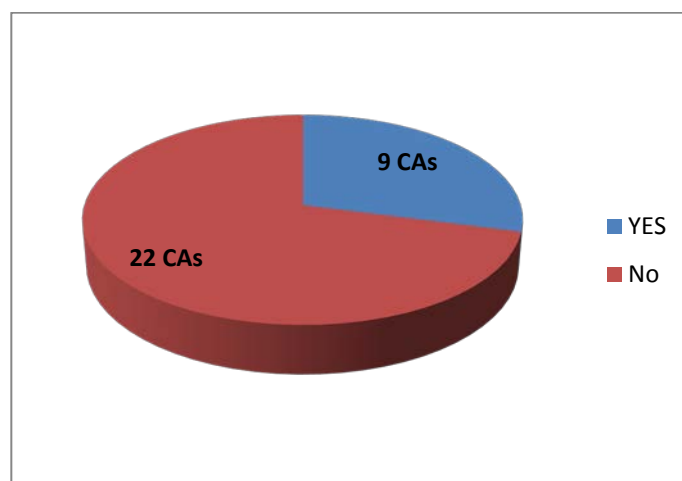
The assessment was made difficult because some CAs provided very generic answers, even after additional details were requested as part of follow-up. Under these conditions, only few peculiarities of the process followed by the CAs can be highlighted.

Regarding the register used to record notifications, one CA records all in an internal register, which serves as the basis for the publication, on the CA's website, of the name of the institutions acting in its jurisdiction with the freedom to provide services or freedom of establishment. Furthermore, all notifications are recorded in an internal system and database used for documentation of proceedings. Another CA keeps track of all the process from the reception of the notification until it sends it to the host CA, also recording in the register the new passport.

In addition, two CAs pointed out that they used the 'four eye-principle' in order to guarantee that notifications include required information. One CA reported that the assessment of notification took into account the activities and the organisation and governance arrangements of the credit institution. Therefore, the staff in charge could assess whether or not the information was detailed enough considering the credit institution and the content and scope of the branch project. Finally, one CA mentioned that the greatest attention was paid to anti-money laundering (AML)/countering the financing of terrorism (CFT) arrangements.

Question 8 focuses on the application of proportionate processes by home CAs for incoming branches established, changes of the particulars of a branch, and provision of services. The analysis suggests that proportionality is not a common approach when dealing with passport notifications. Indeed, only 8 of the 30 respondent CAs, plus the ECB/SSM, indicated that they had a proportionate analysis of notifications (Figure 7).

Figure 7: Application of proportionate analysis¹⁴



¹⁴ The chart specifies the number of CAs that do not apply proportionality when dealing with passport notifications (NO) and the number of CAs that have put in place proportionate processes (YES).

Five CAs, plus the ECB/SSM, considered that applying a proportionate process was a general principle guiding their supervisory activity. Only three CAs and the ECB/SSM indicated that they assessed branch notifications with more attention than service notifications, especially when notifications involved retail and deposit-taking activities.

The reasons for not applying a proportionate process are basically twofold: (i) the framework resulting from the RTS/ITS on passport notifications is rather detailed and does not allow CAs to treat notifications in a different manner, considering the characteristics of the notifying institutions or the nature of the activities envisaged; (ii) CAs received few and/or very similar notifications to apply different approaches during the reference period. One CA specified that time and attention devoted to the process depended on the nature of the notification.

The analysis indicates that the framework resulting from the RTS/ITS does not seem to enable CAs to apply a genuinely 'proportionate approach'. Indeed, even the CAs that reported having in place some sort of proportionality did not indicate great or substantial differences in the processes applied to different notifications. This could be a result of the 'maximum harmonisation' objective underlying the EU framework for passport notifications.

- ⇒ **Review Panel proposal:** The Review Panel notes that the EU framework resulting from the CRD provisions and the RTS/ITS on passport notifications is rather detailed and does not give flexibility to introduce *ex ante* proportionality. However, the Review Panel encourages CAs to apply proportionality in passport notification processes to give proper regard to the nature, size and riskiness of the business envisaged, in particular when dealing with more complex notifications and in the context of early interactions between home and host authorities.

3.2.3. Granularity

The second benchmarked question (Question 9) seeks to assess how home CAs check the granularity of information received¹⁵.

Twenty-three CAs considered that they applied a fully comprehensive process for the assessment, while six CAs and two CAs deemed that they had a largely or partially comprehensive process respectively (Table 3). Two CAs were upgraded during the review.

¹⁵ With regard to granularity of the information provided, which criteria from the below does your CA, acting as a home CA, comply with? Benchmarking criteria: i) checks that the business envisaged is already carried out in home country, ii) assesses that the business envisaged and structural organisation of the branch are consistent with the bank's risk profile, iii) evaluates whether the business envisaged is aligned with bank strategic business goals, iv) assesses that the structural organisation of the branch for investment services and activities envisaged is adequate, v) assesses whether the Anti-Money Laundering (AML) arrangements are sufficiently detailed. [fully comprehensive process: 5 criteria met/largely comprehensive process: 4 criteria met/ partially comprehensive process: 3-2 criteria met/weak process: 0-1 criterion met].

Table 3 Summary table of competent authorities' benchmarked responses (Q9)

MS	Assessment	MS	Assessment
AT	Fully comprehensive process	IS	Fully comprehensive process
BE	Largely comprehensive process	IT	Fully comprehensive process
BG	Fully comprehensive process	LI	Fully comprehensive process
CY	Fully comprehensive process	LT	Fully comprehensive process
CZ	Fully comprehensive process	LU	Largely comprehensive process
DE	Fully comprehensive process	LV	Fully comprehensive process
DK	Largely comprehensive process	MT	Non-contributing
ECB	Fully comprehensive process	NL	Largely comprehensive process
EE	Fully comprehensive process	NO	Partially comprehensive process
EL	Fully comprehensive process	PL	Fully comprehensive process
ES	Fully comprehensive process	PT	Fully comprehensive process
FI	Fully comprehensive process	RO	Fully comprehensive process
FR	Fully comprehensive process	SE	Partially comprehensive process
HR	Largely comprehensive process	SI	Fully comprehensive process
HU	Fully comprehensive process	SK	Largely comprehensive process
IE	Fully comprehensive process	UK	Fully comprehensive process

The CAs that considered they do not have a 'fully comprehensive process' in place explained it by the lack of attention to the alignment of the business envisaged by the institution with the bank's strategic business goals, or with the AML framework.

Question 10 lists the types of weaknesses that home CAs have identified in the structural organisation of the credit institution based on the corresponding form submitted by that credit institution in accordance with Article 3(2)(b) of the RTS. The vast majority of the CAs (93.5%) did not note any weaknesses concerning the information provided on the structural organisation of the branch; several CAs noted that they had dealt with no branch notifications within the reference period.

The weaknesses concerned mostly the risk management of the branch, programme of operations, outsourcing arrangements, limits regarding lending activities, scope of internal control mechanisms, separation of the risk management of the branch from the credit institution, descriptions of currency risk, business model in general, and inconsistent data in the business plan.

For Question 10(i) regarding the mitigation measures, CAs reported few cases of weaknesses in the structural organisation of the branch. Therefore, CAs did not see the need to take mitigation measures. However, in one case a letter was sent to a credit institution indicating the weaknesses and requesting that it make the necessary amendments. Another CA indicated that outside the reference period some weaknesses in the structural organisation of a branch had been identified. This CA invited the bank to adopt measures to improve the structural organisation of that branch.

3.2.4. Timeliness

This section encompasses Questions 11-13 and looks at the analysis of various timescales the CAs have been applying to the analysis of the received passport notifications, including time taken to carry out actual assessments of the notifications, and how CAs applied a 3-month deadline for the assessments as provided in Article 35(3) of the CRD.

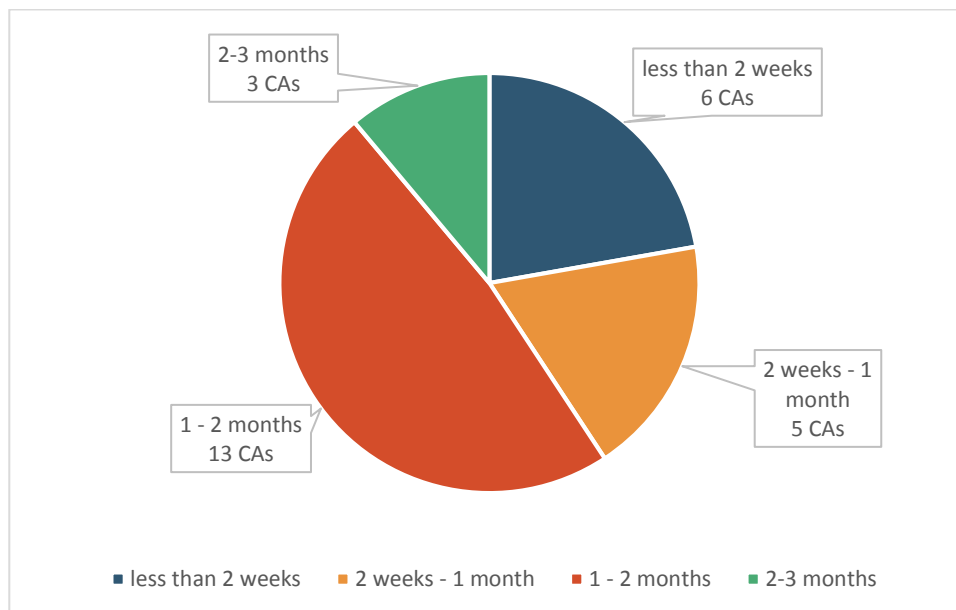
The information provided by the credit institutions in their passport notifications must be complete and accurate in order to enable the home CA to assess the intended establishment of a branch from the perspective of the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged and to take the decision on whether to send a notification to the host CA or to refuse to send it. According to Article 35(3) of the CRD and considering Article 5(2) of the ITS, this decision shall be taken within 3 months of receipt of the complete notification. This 3-month limit is shortened to 2 months in the case of SSM countries.

Question 11 focuses on how long on average it takes for home CAs to assess the completeness and accuracy of branch passport notifications during the reference period. For almost half of the CAs, it takes between 1 and 2 months to assess the received passport notifications (Figure 8). However, this assessment takes between 2 weeks and 1 month in five CAs, and six CAs are able to make the assessment in less than 2 weeks. Three CAs have to devote between 2 and 3 months to performing their assessment.

Figure 8: Average time devoted to the assessment of the completeness and accuracy of the received passport notifications^{16,17}

¹⁶ One did not answer Q11, and two CAs reported no experience in assessing outgoing branch passport notifications. MT did not contribute to the peer review.

¹⁷ The figures show the number of CAs that assess completeness and accuracy of information received in a certain timeframe.



It seems that the median time for the assessment of passport notifications is around 1 month or 1.5 months. This timescale could be considered good practice.

- ⇒ **Possible best practice:** The Review Panel suggests that CAs could complete the internal procedures for the assessment of the completeness and the accuracy of branch and services passport notifications within 1.5 months.

Question 12 focuses on whether or not home CAs had experienced cases where the assessment period ran longer than the period referred to in Article 5 of the ITS for the establishment of branches, Article 9 for changes in particulars of a branch or Article 11 for services notifications. The responses provided by the CAs depend on their ability to comply with the deadline imposed by the CRD. Six CAs indicated that they had incurred overruns in some cases. The most usual reasons are delays and deficiencies in the information provided by the institutions, and problems with workload and supervisory resources. In one case, some institutions sent their passport notifications to the ECB instead of the CA. Most of the authorities (25) indicated that they had not experienced overruns in the assessment of the received passport notifications in their capacity as home CA.

Question 13 seeks to understand when the CAs start the 3-month (2-month for SSM) period. According to Article 5(2) of the ITS, on receipt of a branch passport notification the home CAs shall assess the completeness and accuracy of the information provided. Home CAs shall treat the 3-month period as having commenced on the date of receipt of the branch passport notification containing information that is assessed to be complete and correct. To this end, Article 5(2) of the ITS in practice provides CAs with the option of not launching the mandatory 3-month time period for the assessment of passport notifications until the information provided by the institutions is deemed complete and accurate. This possibility has been exercised by most of the CAs (28), allowing them to request additional information from the institutions before starting the clock. Two CAs, however, have been starting the 3-month assessment period from the date of the initial

receipt of the notification from the institution. Although it is beyond the scope of the peer review, this question raises a possible issue of the level playing field in the overall assessment process for notifications. In certain situations, home CAs might not start the 3-month or 2-month period for the assessment of passport notification on the ground that they need to request further information to complete the notification received. Although this approach is fully in accordance with the ITS, and most of the authorities follow this in practice, as there is no time limit in the legislation for requesting additional details, the overall timescale for exercises of the passporting might be longer. However, this issue goes beyond the objective of this peer review, the SAQ only asking when the procedure is started.

3.3. Use of information by host authorities

Question 14 seeks to understand the extent to which host CAs engage with new branches recently authorised, regarding the conditions under which, in the interests of the general good, activities are to be carried out in the host Member State.

Most of the CAs (21) engage with the credit institutions and sometimes with the home CA, while eight CAs formally answered that they did not engage with the incoming branches. It is worth noting that two countries indicated that they did not have branches operating in their jurisdiction. In addition, the ECB/SSM is not involved in the procedure, as CAs are responsible for engaging with branches. In most cases, the engagement is formalised by letter. Generally, the letter contains detailed information on the requirements and references of national law applicable to the branch. Among the information released, most of the CAs referred to their AML/CFT framework and consumer protection requirements. One CA also set up a meeting with the managers of the branch in order to discuss the branch's obligations.

- ⇒ **Possible best practice:** The Review Panel suggests that CAs should have a dialogue with the branch managers, especially when the branch business is deemed to have some significance (in terms of size, riskiness or nature of activity) for the host jurisdiction during the 2 months CAs have to get ready for supervision.

In accordance with Article 36(1) of the CRD, CAs of the host Member State shall, within 2 months of receiving the information referred to Article 35, prepare for the supervision and, if necessary, indicate to the institution "general good" conditions. The objective of Question 14(i) is to assess whether or not CAs always comply with this requirement in the timeframe requested. Twenty-six CAs responded that they did so in the required timescale of 2 months. One CA indicated that on one occasion the engagement with the branch was delayed without it being considered a structural deficiency of the CA's process. The question is not applicable to the ECB/SSM, as it is not involved in this procedure. Two CAs also advised that they did not have any branches in their jurisdiction.

Question 15 refers to Article 36 of the CRD and seeks to ascertain whether or not host CAs already set conditions ('general good' conditions) under which a branch should carry out its activities in the host Member State.

Only four host CAs reported having set conditions for new branches to carry out activities in their jurisdictions. In all cases, the national law empowers the host CA to set conditions for branches to operate in their jurisdiction. One of the four CAs that apply conditions may do so because the branch has to provide mutually recognised financial services in its jurisdiction. In another jurisdiction, branches are required to hold separate licences for performing deposit-taking activities and for special mortgage transactions.

Question 17 is a benchmarked question focusing on the compliance with the requested timeframe and communication with host CAs for all types of notifications¹⁸.

Table 4: Summary table of competent authorities' benchmarked responses (Q17)

MS	Assessment	MS	Assessment
AT	Fully comprehensive process	IS	Partially comprehensive process
BE	Largely comprehensive process	IT	Fully comprehensive process
BG	Fully comprehensive process	LI	Fully comprehensive process
CY	Fully comprehensive process	LT	Largely comprehensive process
CZ	Fully comprehensive process	LU	Fully comprehensive process
DE	Fully comprehensive process	LV	Fully comprehensive process
DK	Fully comprehensive process	MT	Non contributing
ECB	Fully comprehensive process	NL	Fully comprehensive process
EE	Fully comprehensive process	NO	Partially comprehensive process
EL	Fully comprehensive process	PL	Largely comprehensive process
ES	Fully comprehensive process	PT	Fully comprehensive process
FI	Fully comprehensive process	RO	Fully comprehensive process
FR	Fully comprehensive process	SE	Largely comprehensive process
HR	Fully comprehensive process	SI	Fully comprehensive process
HU	Fully comprehensive process	SK	Largely comprehensive process
IE	Fully comprehensive process	UK	Fully comprehensive process

¹⁸ With regard to all types of notifications, which criteria from the below does your CA, acting as a home CA, comply with? Benchmarking criteria: i) once the information provided are assessed as complete and correct, always takes its decision within the requested timeframe (3 months for the establishment of a branch, 1 month for changes notifications and services notifications), ii) communicates passport notifications to the host CA without delay, iii) communicates the additional information required such as the latest available information on own funds in case of branch passport notification, and iv) when your CA acts, as a host CA, always decides on the follow up to be given within the requested timeframe (2 months for the establishment of a branch, 1 month for changes in branch notifications), once all the information requested for the establishment of a branch or for changes in branch particulars notification are communicated. [fully comprehensive process: 4 criteria met/largely comprehensive process: 3 criteria met/ partially comprehensive process: 2 criteria met/weak process: 0-1 criterion met].

As provided in Figure 12, most of the CAs (24) have a fully comprehensive process regarding passporting notifications, while five CAs noted that their process was largely comprehensive during the reference period. Two CAs reported either having a partially comprehensive process or that the question was not applicable. The main reasons for which CAs do not have a fully comprehensive process relate to delays in notifying the host CA. In one case, a delay happened on one occasion. This home CA took remedial actions, so that this delay cannot be considered a structural deficiency.

With a view to facilitating the tracking of deadlines, one CA uses a dashboard showing all passport notifications received. The ECB/SSM, while formally treated as the host CA for the branches of significant institutions established in a participating Member State, acts as an intermediary and shares the tasks related to passporting with the CAs, as mentioned in section 1.2. However, the ECB/SSM does not act as a host CA regarding the passporting procedures because the ECB does not host any branches in practice.

- ⇒ **Possible best practice:** The Review Panel encourages setting any possible tool to improve the tracking of notifications received and any other useful information related to the passporting process such as the deadlines of the procedures.

In Question 18, home CAs were requested to explain their engagement with host CAs before sending the information required in accordance with Article 6 of the ITS for branch passport notifications, Article 9(3) for changes of branch particulars notifications and Article 12 for services passport notifications.

In most jurisdictions, the home CA does not engage with the host CA before sending the required information in accordance with the ITS. One CA indicated that it had to deal with only one case relating to a very small bank without possible material effects in the host country during the reference period. This CA clarified that it would have contacted the host CA, if the notification had come from a bigger bank bearing significant risks. For the other CAs that engaged with the host CA in advance of making the formal notification, it was mainly in cases in which the notification was complex or where problems had been foreseen.

- ⇒ **Possible best practice:** The Review Panel considers that cooperation and information sharing in case of passport notifications may be beneficial for home and host CAs. Therefore, the Review Panel encourages home CAs to engage early with host CAs in cases of complex notifications where the envisaged activities may have implications for the host CA's responsibilities, such as the establishment of significant branches, or the transformation of the existing subsidiary into a branch, or material changes in the activity of the branch. Such an early engagement may also be useful for home CAs to get a comprehensive view about risks and other critical aspects that may arise from doing business in the host jurisdiction.

Question 19 seeks information about the communication of any sort of qualitative assessment of the branch that home CAs transmit to host CAs, in addition to the form and template of Annexes 2 and 3 of the ITS.

In all but two jurisdictions, home CAs do not provide any additional qualitative assessment of the branch to the host CA. For the CAs that do provide information in addition to the form and templates embedded in the ITS, this information mostly relates to the type of activities and the structure of the credit institution. One CA noted that when making a decision to provide additional information it took into account the characteristics of the credit institution and the nature/scope of the activities notified.

- ⇒ **Possible best practice:** The Review Panel recommends sharing a qualitative assessment of the notification done by the home CA with the host CA, especially in the complex cases referred to above (e.g. the establishment of significant branches that, based on their programmes of operations, can be considered significant in the meaning of Article 51 of the CRD, or significant plus in the meaning of the EBA Guidelines on supervision of significant branches; the transformation of an existing O-SII subsidiary into a branch; or material changes in the activity of the branch).

Question 20 aims to understand if CAs, either as home or host CA, when taking a decision regarding the changes of branch particulars notification, communicate with the other CA, where relevant, before communicating the decision in writing to credit institutions in accordance with Article 9 of the ITS.

Only five CAs communicate with the other CA prior to communicating with the credit institution once a decision has been taken. Some CAs mentioned that they may liaise with the other CA but no cases occurred during the reference period. The ECB/SSM noted that the change of branch particulars notifications for significant institutions are handled by the CAs. The ECB is not directly involved in this procedure.

Question 21 addresses whether or not home CAs have already refused to communicate to host CAs the information required by Articles 3 and 5 of the RTS.

Generally, home CAs cooperate smoothly with host CAs by communicating the information required. Only two CAs had refused to communicate information to the host CA. The main reasons provided by these CAs included instances when the submitted information is incorrect, misleading or incomplete; and when the financial situation, organisational structure or other resources of the credit institution are inadequate for the provision of cross-border services. One CA had not forward the information required in one case because it doubted the financial soundness of the credit institution. In other cases, this CA observed organisational deficits in the administrative structure.

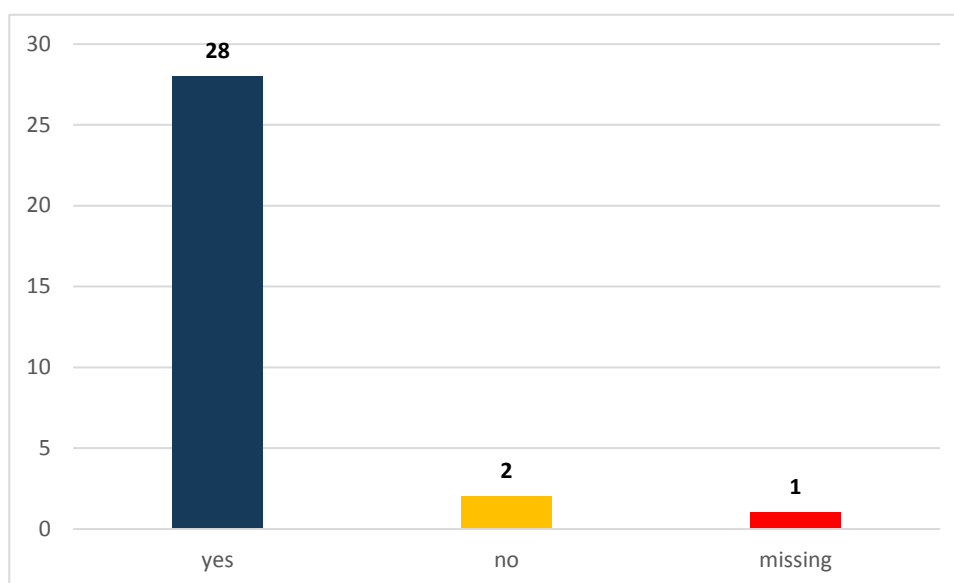
3.4. Adequacy of resources and governance arrangements

In accordance with Article 30 of the EBA Founding Regulation, the EBA's peer reviews have to include an assessment of the adequacy of resources and governance arrangements, with particular attention to the effective application of the standards under review and the capacity to respond to

market developments. This section of the SAQ has been designed to serve this purpose, even though no benchmarked questions have been added.

Question 22 checks whether or not home/host CAs have in place an escalation process through which the senior management can become aware of any major issues regarding passport notifications. A large majority of CAs indicated that they had implemented such an escalation process/procedure (Figure 9). It is either structured as part of the standard notification of hierarchical superiors and senior management (or standard escalation process), where most complex decisions have to be made, or through systematically informing senior management. Two CAs answered that they did not have such an escalation procedure.

Figure 9 Escalation process/procedure to inform senior management of major issues regarding passport notifications



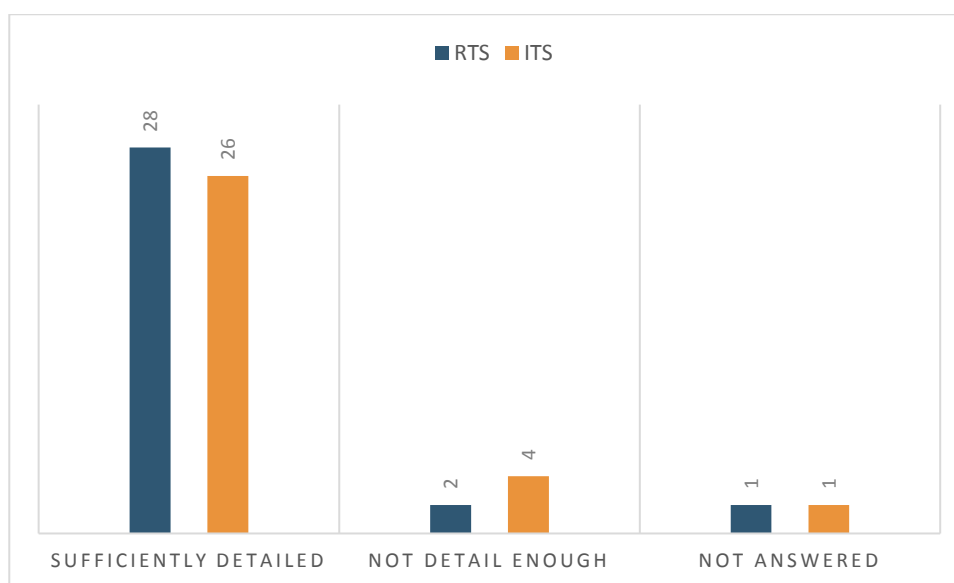
3.5. CAs' views on the use of the RTS on passport notifications

The Review Panel may also propose revisiting the RTS in the light of the findings of this peer review. For this purpose, particular attention has been paid to collecting CAs' views on the suitability of the RTS in place both for the objectives established in the CRD regarding the right of establishment of credit institutions and in relation to CAs' capabilities. The questions included in the SAQ were optional, but the vast majority of CAs provided their feedback.

Questions 24 and 24(i) ask if CAs consider the mandatory information required in the RTS and the ITS with regard to the notification process to carry out new services and activities, changes and services provided in another Member State are sufficiently detailed to assess the passport

notification. A large majority of CAs consider that the regulations contain sufficient detail, i.e. 28 CAs for the RTS and 26 CAs for the ITS, while 1 did not provide an answer to either question, as they were optional (Figure 10).

Figure 10 Level of detail of the required information¹⁹



Therefore, there was a high level of consensus that the level of detail of the information currently required for credit institutions by both the RTS and the ITS is suitable. In addition, the CAs provided additional feedback about where the RTS and the ITS could include further details to be requested from credit institutions, mainly about operational issues.

Regarding the feedback on the RTS, one CA stated that the set of information requested needed to be completed with other type of information as set out in national legislation. Another CA pointed out the ambiguity about the source of the notification of cancellation of a branch to the host authority, whether it needs to come from the home authority or the credit institution.

Some CAs, while considering that the RTS provide enough level of detail on the required information, included the following observations:

- Further improvements could be produced, mainly in commercial and operational areas, in order to assess how the branch will obtain and deal with clients, such as the description of commercial strategies, the specifications of reporting lines from branches to head offices with a view to assessing how the branch reports to the head office, and the inclusion of the role of tied agents to assess the types of activities they will perform (in the case of investment firms).

¹⁹ The graph shows the satisfaction of CAs with regard to the level of details of the information required in the RTS.

- There was room for improvements, both in change of passport notifications (such as providing a full list of activities provided in the host Member State, in addition to just listing the changes of services) and in services passport notifications (such as including AML arrangements and the applicable DGS).
- There was a suggestion to include the SREP requirements applicable to the credit institution.

The CAs provided more wide-ranging feedback in relation to the ITS. One CA focused on issues once the branch has terminated its activities, by requiring additional information about the retention of the physical archives as well as the appointment of at least one person responsible for responding to any enquiries of the authorities from that Member State.

Another CA indicated that internationally used identifier codes of credit institutions, such as the LEI, should be included in the ITS forms, as these codes are required by the ECB/SSM as part of the passporting notification process. In addition, details of the parent entity should also be inserted.

A CA suggested the inclusion of an email address of the bank within the ITS while another CA directed its feedback to services notifications, for which the ITS should include not only intended start date, but also the date when previous activities were launched. For notifications of changes, the same CA suggested an additional column for the date when the activity is expected to be stopped.

Some CAs still provided additional suggestions:

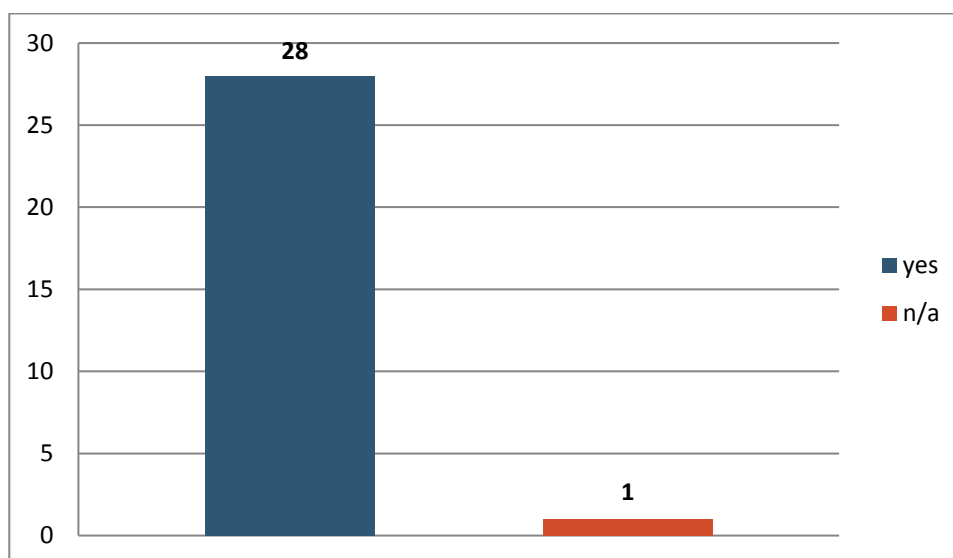
- One CA suggested a number of improvements in the annexes of the ITS as follows: for branch passport, Annex 1 could indicate arrangements to deal with consumer complaints and if they join FIN-NET²⁰, and Annex 4 could include information about branches' plans in case the parent credit institution is acquired by another institution; and for services passport, Annex 5 could (i) indicate how credit institutions deal with consumers' complaints and if they join FIN-NET and (ii) include arrangements for AML and the applicable DGS.
- Likewise, another CA recommended including some additional information for credit institutions to provide further details: reason for the notification and strategic rationale. The EBA can provide guidance about how to fill the questions in the form.
- It Adding new activities in Annex 5 introduced by PSD2 (payment initiation services and account information services) and by MiFID II was also suggested.

Question 25 asks if CAs consider the level of granularity of the information required for the description of the programme of operations sufficient in accordance with Article 3(2)(b) of the RTS. Most CAs, i.e. 96% of respondents, stated that they considered the granularity of information

²⁰ See https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/consumer-financial-services/financial-dispute-resolution-network-fin-net/fin-net-network/about-fin-net_en

required sufficient (Figure 11)²¹. The question does not apply to the remaining respondent, as this CA did not act as a home CA during the reference period. Nevertheless, given that credit institutions are allowed to passport activities under other directives, some respondents recommend clarifying the interlinkage between the ITS and the RTS on passport notifications and the other directives dealing with passporting (e.g. MiFID²², PSD²³ and MCD²⁴).

Figure 11: Sufficiency of the granularity of information for programme of operations²⁵



Question 26 focuses on whether or not CAs consider that the process of notification is efficient and ensures timely sharing of information between home and host CAs.

Looking at the efficiency of the process, most CAs (79%) are satisfied with the current process of notification and consider that the process ensures timely sharing of information between home and host CAs. Nevertheless, some CAs have identified areas for improvement in the current process

²¹ The programme of operations referred to in point (b) of paragraph 1 shall comprise the following items:

(b) structural organisation of the branch, comprising the following items:

(i) a 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;
(ii) a description of governance arrangements and internal control mechanisms of the branch.

²² Markets in Financial Instruments Directive (MiFID) (2004/39/EC): the directive is a cornerstone of the EU's regulation of financial markets, seeking to improve their competitiveness by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments.

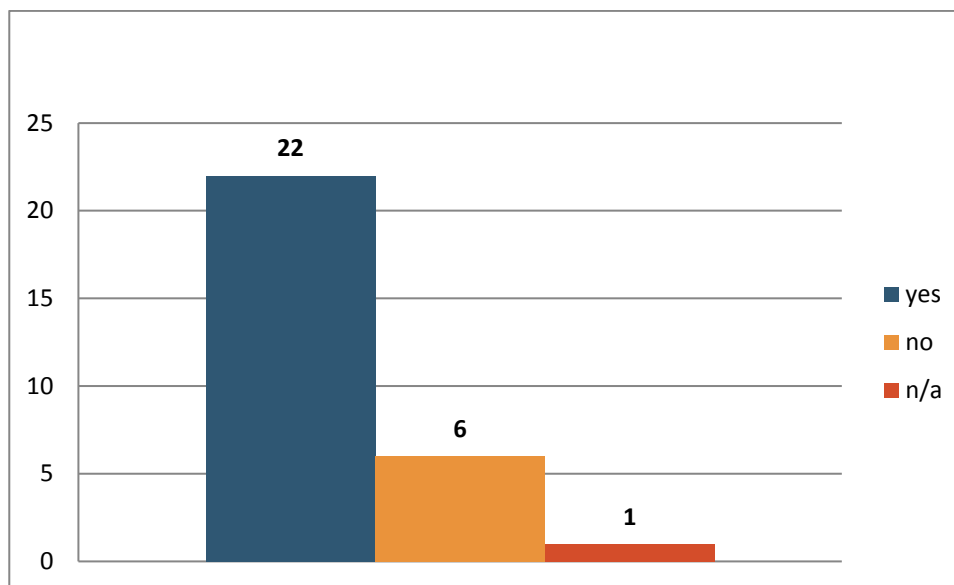
²³ Payment Services Directive (PSD) (2015/2366/EU): the directive provides the legal foundation for the further development of a better-integrated internal market for electronic payments within the EU.

²⁴ Mortgage Credit Directive (MCD) (2014/17/EU): the directive aims to ensure that all consumers who take out a mortgage to purchase a property are adequately informed about and protected against the risks.

²⁵ The graph shows how CAs view the granularity of information regarding the programme of operations submitted by credit institutions, and more precisely whether or not the detail of information is enough. One did not send the SAQ and two CAs did not reply to these optional questions.

(21% of respondents) (Figure 12). These CAs generally see the process as complex and cumbersome.

Figure 12: Efficiency of the process²⁶



Furthermore, some respondents provided proposals covering various aspects of the passport procedure. Those proposals stems from CAs' views and have to be assessed by the EBA to ensure that they are feasible, consistent with identified best practices and in line with the EU legislation.

1) To improve the cooperation between CAs:

- Clarifying the responsibilities of each stakeholder (home and host authorities) and actions required in a single document within the SSM context would be helpful.
- In this respect, the ECB/SSM is developing internal operational guidance for CAs to clarify the flows between the ECB/SSM and CAs.
- Clarifying the information required to assess if the EU requirements on passporting are met would be useful.

2) To smooth the passport notification procedures:

- More clarity on the information requirements to institutions would help avoid repeated requests for additional information and would make the process less

²⁶ The graph reveals how satisfied the CAs are with regard to the efficiency of the passporting process. One did not send the SAQ and two CAs did not reply to these optional questions.

time-consuming. The EBA could develop a notification form containing explanatory notes to each field²⁷.

- Development of a common automated platform would improve time efficiency and compliance with the mandatory timeframe and minimise the need to send out hard copies of notifications.
- The passporting notifications for cross-border provision of services covering all countries, which are not necessarily used by institutions, could be clarified. This increasing practice represents an additional burden for CAs.

²⁷ For example, when it asks about governance, a group chart and organisational chart of the entity should always be uploaded.

4. Annexes

ANNEX 1: Country codes and acronyms of competent authorities

Country code	Country	Competent authority ²⁸
AT	Austria	Finanzmarktaufsicht (Financial Market Authority, FMA), Oesterreichische Nationalbank (OeNB)
BE	Belgium	National Bank of Belgium (NBB)
BG	Bulgaria	Българска народна банка (Bulgarian National Bank)
CY	Cyprus	Κεντρική Τράπεζα της Κύπρου (Central Bank of Cyprus)
CZ	Czech Republic	Ceska Narodni Banka (Czech National Bank, CNB)
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, BaFin), Deutsche Bundesbank
DK	Denmark	Finanstilsynet (Danish Financial Supervisory Authority, Danish FSA)
ECB/SSM		European Central Bank/Single Supervisory Board
EE	Estonia	Finantsinspektsioon (Financial Supervision Authority)
EL	Greece	Τράπεζα της Ελλάδος (Bank of Greece)
ES	Spain	Banco de España (Bank of Spain)
FI	Finland	Finanssivalvonta (Finnish Financial Supervisory Authority)
FR	France	Autorité de Contrôle Prudentiel et de Résolution (Prudential Supervisory and Resolution Authority – ACPR)
HR	Croatia	Hrvatska Narodna Banka (Croatian National Bank)
HU	Hungary	Magyar Nemzeti Bank (National Bank of Hungary)
IE	Ireland	Central Bank of Ireland
IT	Italy	Banca d'Italia (Bank of Italy)
IS	Iceland	Fjármálaeftirlitið (Icelandic Financial Supervisory Authority, FME)
LI	Liechtenstein	Finanzmarktaufsicht (Financial Market Authority, FMA)
LT	Lithuania	Lietuvos Bankas (Bank of Lithuania)
LU	Luxembourg	Commission de Surveillance du Secteur Financier (Financial Sector Supervisory Commission, CSSF)
LV	Latvia	Finansu un Kapitāla Tirgus Komisija (Financial and Capital Market Commission)
MT	Malta	Malta Financial Services Authority
NL	Netherlands	De Nederlandsche Bank (Dutch Central Bank, DNB)
NO	Norway	Finanstilsynet (Norwegian Financial Supervisory Authority)
PL	Poland	Komisja Nadzoru Finansowego (Polish Financial Supervision Authority, KNF)
PT	Portugal	Banco de Portugal (Bank of Portugal)
RO	Romania	Banca Națională a României (National Bank of Romania)
SE	Sweden	Finansinspektionen (Swedish Financial Supervisory Authority)
SI	Slovenia	Banka Slovenije (Bank of Slovenia)

²⁸ Also includes central banks with supervisory tasks.

Country code	Country	Competent authority ²⁸
SK	Slovakia	Národná Banka Slovenska (National Bank of Slovakia)
UK	United Kingdom	Prudential Regulation Authority (PRA)

ANNEX 2: Detailed summary of all self-assessments

MS	Q7	Q9	Q17
AT	FCP	FCP	FCP
BE	FCP	LCP	LCP
BG	FCP	FCP	FCP
CY	FCP	FCP	FCP
CZ	FCP	FCP	FCP
DE	FCP	FCP	FCP
DK	LCP	LCP	FCP
ECB/SSM	FCP	FCP	FCP
EE	FCP	FCP	FCP
EL	FCP	FCP	FCP
ES	FCP	FCP	FCP
FI	FCP	FCP	FCP
FR	FCP	FCP	FCP
HR	FCP	LCP	FCP
HU	FCP	FCP	FCP
IE	FCP	FCP	FCP
IS	FCP	FCP	PCP
IT	FCP	FCP	FCP
LI	FCP	FCP	FCP
LT	FCP	FCP	LCP
LU	FCP	LCP	FCP
LV	FCP	FCP	FCP
MT	Non-contributing	Non-contributing	Non-contributing
NL	FCP	LCP	FCP
NO	FCP	PCP	PCP
PL	FCP	FCP	LCP
PT	FCP	FCP	FCP
RO	FCP	FCP	FCP
SE	PCP	PCP	LCP
SI	FCP	FCP	FCP
SK	FCP	LCP	LCP
UK	FCP	FCP	FCP

Key

Green: fully comprehensive process (FCP)

Yellow: largely comprehensive process (LCP)

Orange: partially comprehensive process (PCP)

Red: weak process (WP)

ANNEX 3: Self-assessment questionnaire

Information collection

- **Q1:** How many notifications has your CA, acting as home CA, received for the establishment of new branches and for the services provided by credit institutions located in another Member State during the reference period?

For SSM countries:

- Regarding significant credit institutions, please provide the number of notifications for the establishment of a new branch you shared with the SSM. From this number, please provide the amount of notifications your CA dealt with at national level.
- Please also provide the number of notifications your CA sent to the ECB/SSM with regard to the freedom to provide services.
- **Q2:** When acting as home CA, has your CA applied requirements that have been laid down in a specific national law, in addition to those in the RTS? [Drop-down menu: Yes/No.]
 - o If yes, please provide the requirements imposed by the national law. If yes, how does your CA proceed to apply both the EU and national laws?
 - o If not, does your CA request additional information beyond the mandatory ones embedded in Articles 3, 4 and 5 of the RTS? Please give examples of the information requested and the purposes of such request.
- **Q3:** What are the three most common activities carried out by the branches authorised in your jurisdiction, as a host country? [Drop-down menu: 1. Taking deposits and other repayable funds; 2. Lending; 3. Financial leasing; 4. Payment services; 5. Issuing and administering other means of payments; 6. Guarantees and commitments; 7. Trading for own account or for account of customers; 8. Participation in securities issues; 9. Advice to undertakings on capital structure, industrial strategy, 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.]
- **Q4:** In your jurisdiction, how many subsidiaries either of EEA parents or an entity within the same group have cancelled their authorisation and transferred the majority of the subsidiary's business to a branch (also within your jurisdiction) during the reference period?
- **Q5:** Regarding the branch passport notifications, does your CA, acting as a home CA, issue any explanatory notes or guidance on the information requested when effecting the notification in accordance with paragraph 1 of Article 35 of CRD IV? [Drop-down menu: Yes/No.] If yes, please provide an explanation and supporting material.
- **Q6:** During the first review of the three types of notifications, should some of the information required be missing or inconsistent, how long does your CA, acting as home

Authority, take to contact the credit institution on average? [Drop-down menu: Less than 2 weeks/Between 2 weeks and one month/More than one month.]

Information quality assurance

Completeness

- **Q7:** [benchmarked question] With regard to the completeness and tracking of information received, please specify if your CA, acting as a **home Authority**:
 - o checks that **all** the forms attached in the ITS (Annexes 1, 4 and 5) or any other additional forms are fully filled out,
 - o checks that **all** the information which should be provided by credit institutions matches the information required by Articles 3, 4 and 5 of the RTS,
 - o checks that the information provided is detailed enough to enable your CA to assess the adequacy to carry out the activities envisaged in the territory of another Member State as specified in recital 1 of the RTS,
 - o records and monitors all the notifications received.

[4 criteria: fully comprehensive process/3 criteria: largely comprehensive process/2 criteria: partially comprehensive process/1-0 criterion: weak process]

- **Q8:** Does your CA, acting as a home CA, apply proportionate processes related to the size, complexity, risks held by credit institutions, or the nature of notifications for incoming branches established in your jurisdiction, changes of the particulars of a branch where relevant, and provision of services? [Drop-down menu: Yes/No.] If yes, please provide further details about the application or lack of proportionality.

Granularity

- **Q9:** [benchmarked question] With regard to granularity of the information provided, please specify if your CA, acting as a home Authority,:
 - o checks that the business envisaged is already carried out in the home country,
 - o assesses that the business envisaged and structural organisation of the branch are consistent with the bank's risk profile,

- evaluates whether the business envisaged is aligned with bank strategic business goals,
- assesses that the structural organisation of the branch for investment services and activities envisaged is adequate,
- assesses whether the Anti-Money laundering (AML) arrangements are sufficiently detailed.

[5 criteria: fully comprehensive process/4 criteria: largely comprehensive process/3-2 criteria: partially comprehensive process/1-0 criterion: weak process]

- **Q10:** a) Please summarise the type of weaknesses, as referred to in Article 3(2)(b) of the RTS, that your CA, acting as a home CA, has identified in the structural organisation of the credit institution based on the relevant form submitted by that credit institution. b) If some weaknesses have been identified, what mitigating measures has your CA taken?

Timeliness

- **Q11:** How long on average does it take for your CA, acting as a home CA, to assess the completeness and accuracy of branch passport notifications? [Drop-down menu: Less than 2 weeks/Between 2 weeks and one month/Between one month and two months/Between two months and three months.]
- **Q12:** Has your CA, acting as a home CA, experienced cases where the assessment period runs longer than the period referred to in Article 5 of the ITS for the establishment of branches (3 months/2 months for SSM countries), Article 9 for changes in particulars of a branch (1 month), Article 11 for services notifications (1 month)? [Drop-down menu: Yes/No.] If yes, please provide reasoning and remedial actions taken.
- **Q13:** Should your CA, acting as a home CA, identify the information provided by credit institutions is incomplete or incorrect, when does your CA consider that the three-month period and the one-month period referred to in Article 5(2), 9(2), 12(2) of the ITS starts? [Drop down menu: At the initial receipt of the notification/When the notification is assessed as complete and correct/Other.] If other, please provide further details.

Use of information by host Authorities

- **Q14:** a) Does your CA, acting as host CA, engage with new branches recently authorised to operate in your jurisdiction, regarding the conditions under which, in the interests of the general good, activities are to be carried out in the host Member State? [Drop-down menu: Yes/No.] If yes, please provide the means, timeliness and granularity of communication and concrete examples (letters, manual, links to the material). b) Does your CA always engage

with those new branches within two months of receiving the information requested for the establishment of a branch by Article 36 CRD IV?

- **Q15:** Pursuant to Article 36 CRD IV, has your CA, acting as host CA, already set restrictions under which a branch should carry out its activities in the host Member State? [Drop-down menu: Yes/No.] If yes, did your CA provide explanations about the restrictions to the home Authority? Please provide the level of granularity and any anonymised supporting material.
- **Q16:** Does your CA, acting as host CA, keep track of all passport notifications received and maintains the repository of credit institutions allowed to establish branches or provide services in its jurisdiction? [Drop-down menu: Yes/No.] If yes, please explain whether the relevant information from this repository is available publicly.

Cooperation between home and host Authorities

- **Q17:** [benchmarked question] With regard to all types of notifications, please specify if your CA, **acting as home CA:**
 - o once the information provided is assessed as complete and correct, always takes its decision within the requested timeframe (3 months for the establishment of a branch, 1 month for changes in branch notifications and services notifications),
 - o communicates passport notifications to the host CA without delay,
 - o uses the forms set out in the ITS with regard to communication of the notifications,
 - o communicates the additional information required such as the latest available information on own funds in case of branch passport notification,
 - o and when your CA acts as host CA always decides on the follow up to be given within the requested timeframe (2 months for the establishment of a branch, 1 month for changes in branch notifications), once all the information requested for the establishment of a branch or for changes in branch particulars notification is communicated.

[5 criteria: fully comprehensive process/4 criteria: largely comprehensive process/3-2 criteria: partially comprehensive process/1-0 criterion: weak process]

- **Q18:** Does your CA, acting as home CA, engage with the host CA before sending the information required in accordance with Article 6 of the ITS for branch passport notifications, Article 9(3) for changes of branch particulars notifications and Article 12 for services passport notifications? [Drop-down menu: Yes/No.]

- **Q19:** In addition to the form and template of Annexes 2 and 3 of the ITS, does your CA convey any sort of qualitative assessment of the branch to the host CA? [Drop-down menu: Yes/No.] If yes, please provide details on the granularity of this assessment.
- **Q20:** When your CA, acting either as home or host CA, takes a decision regarding the changes of branch particulars notification, does your CA communicate with the other CA, where relevant, before communicating the decision in writing to credit institutions in accordance with Article 9 of the ITS? [Drop-down menu: Yes/No.] If yes, please give examples.
- **Q21:** Has your CA, acting as home CA, refused to communicate the information required as per Articles 3 and 5 of the RTS to the host CA? [Drop-down menu: Yes/No.] If yes, please provide the circumstances and the reasons.

Adequacy of resources and governance arrangements

- **Q22:** When acting as a home/host CA, is there an escalation process or procedure through which the senior management of your CA can become aware of any major issues regarding passport notifications (such as refusal of communicating to the host CA information requested in Article 3 of the RTS; changes in the conditions under which, in the interests of the general good, activities of a branch from another jurisdiction shall be carried out in your jurisdiction; significant delays in the management of the notifications, etc.)? [Drop-down menu: Yes/No.] Please explain the escalation process.
- **Q23:** Does your CA, acting as a home or host Authority, have an IT tool to deal with the notification procedure and keep track of any notifications received? [Drop-down menu: Yes/No.] If not, does your CA plan to set up such an IT tool in the future?

Competent authorities' views on the use of the RTS on passport notifications (optional questions)

- **Q24:** a) Does your CA consider that the mandatory information required in Articles 3, 4 and 5 of the RTS with regard to the notification process to carry out new services and activities, changes, services provided in another Member State are sufficiently/too much detailed to assess the passport notification? [Drop-down menu: Yes/No.] If not, what information would your Authority consider useful to add in the list? b) Does your CA consider that the forms included in the Annexes 1, 2, 4 and 5 of the ITS are sufficiently/too much detailed? [Drop-down menu: Yes/No.]
- **Q25:** Regarding the programme of operations that credit institutions have to notify to the home CA in accordance with Article 3(2)(b) of the RTS, does your CA consider the level of granularity of the information required in the programme of operations sufficient? [Drop-

down menu: Yes/No.] If not please elaborate, in particular if your CA deems that some additional requirements may be added or refined with regard to the types of business envisaged and/or the structural organisation of the branch.

- **Q26:** Does your CA consider that the process of notification is efficient and ensures timely sharing of information between home and host CAs? [Drop-down menu: Yes/No.] If your answer is 'no', please explain what could be improved in the current process.

ANNEX 4: Sharing of responsibilities between CAs and the ECB/SSM with regard to passport notifications

Home CAs

- Act as entry point of the application from the supervised entity.
- Assess the completeness of the notification.
- Create passporting procedures in IMAS (branch/services).
- Decide in cases of branch and outgoing branch procedures of less significant credit institutions (LSIs).
- Notify host CA in cases of passporting LSIs (branch/services within or outside the SSM) and passporting SI within the SSM.

Host CAs

- Receive notification from home CA/ECB.
- Inform the supervised entity about the conditions under which, under national law in the interest of general good, activities can be carried out.
- Create passporting procedures in IMAS (incoming branch/incoming services).

ECB

- Monitors the passporting procedures in IMAS.
- Assesses whether or not the requirements for passporting branch of SI within or outside the SSM are met.
- Assesses the significance of incoming branches.
- If requirements for passporting branch SI are met, notifies the host CA.
- Notifies the host CA in cases of outgoing services of an SI.
- If the requirements are not met, prepares proposal for a complete draft decision to oppose the establishment of the branch and notifies the applicant and home and host CAs.



EUROPEAN BANKING AUTHORITY

Floor 46 One Canada Square, London E14 5AA

Tel. +44 (0)207 382 1776

Fax: +44 (0)207 382 1771

E-mail: info@eba.europa.eu

<http://www.eba.europa.eu>