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European Banking Authority

Draft Guidelines on supervision of significant branches

The Swedish Bankers' Association (SBA) appreciates the opportunity to comment on the draft guidelines on supervision of significant branches.

General comments

The SBA supports the ambition of the guidelines to further stress the importance of information sharing between supervisory authorities to avoid duplication requests from the institutions. The SBA can also understand the desire to increase the harmonization of the supervision of significant branches. However, it must be considered that the requirements in the Directive 2013/36/EU and 2014/59/EU are relatively new and that the inclusion of the requirements have not yet been set. The EBA has not presented neither a survey nor an analysis of the actual need for a new category of significant branches. The EBA annual report 2015 states that although there have been several cases of disagreements between competent authorities during 2015, the EBA has not been approached with a request to provide its assistance in one of these formal procedures on mediation. As far as disclosed there has not been indicated a need for a further category of significant branches. It could also be mentioned that the EBA has not been provided with a specific and explicit mandate by the directive 2013/36/EU to define a new category of significant branches that require a more intensive participation of host supervisor in supervision tasks.

Significant branches

According to Article 51 of directive 2013/36/EU a competent authority of a host member state may make a request to the consolidating supervisor for a branch to be considered as significant. The article also provides a list of criteria when a branch may be considered as significant. A specific branch may be treated as significant when:

- a. the market share of the branch in terms of deposits exceeds 2 % in the host member state;

- b. the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the host member state
- c. the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host member state

Although the first criterion is objective, the other two remain subjective. The proposed guidelines do not provide any further clarity and certainty relative to the said article. Instead of giving clarity the guidelines will add more complexity and uncertainty to the framework by adding a new category of significant branches, significant plus branches, with further discretion for the supervisory authorities.

Given that the SBA presently cannot see the need for a significant plus branch concept, and given that there is no legal foundation for such a concept, the SBA would rather see further discussions in the EU on how the significant branch concept can be further developed, rather than introducing the significant plus concept.

Host authority

The consultation does not clearly define which powers would be assigned to the host authority of significant plus branches. This may create a non-predictable environment for the parties involved. Table 1 of the EBA consultation shows that the criterion to consider a branch as significant are already very heterogeneous across Member States. There are no indications that any differences have or will create problems for the authorities' supervision.

The proposed guidelines instead entail a risk that supervisors interfere with the internal organization and governance decisions of institutes in a manner that may artificially isolate significant branches from their mother company. Which in turn may not be aligned with the purposes of the current EU regulatory framework and institutional architecture by increasing supervisory requirements at branch level for ICAAP, ILAAP and recovery plans etc. It must be remembered that branches have no separate legal status.

It is also important to clarify how the proposed guidelines relate to the Single Supervisory Mechanism with the purpose to ensuring a centralized and single approach to supervision.

Implications for institutions

Although the EBA has stated that the guidelines do not limit in any form freedom of institutions to establish branches in other member states, the guidelines do not prevent supervisors to consider the establishment of a significant-plus branch in the assessment of an envisaged merger.

Additional burdens cannot be excluded, due to the intensified supervisory activities in relation to a significant-plus branch, such as the Annex to the SREP and the additional specific on-the-spot checks and inspections. These supervisory activities (information requests, interviews, etc.) will be performed in cooperation with the institution and will as such cause an additional burden. The same position could be asserted in respect of recovery plans, as set out in paragraph 69 of the proposal.

Specific questions

1. What are the respondents' views on the overall approach to the organization of supervision of the subset of significant branches with particular importance to the group or institution or to the financial stability in the host Member State (significant-plus branches)?

See the introductory part. There is no further guidance on what constitutes the assessment of a significant branch and thus not a significant plus branch. The consultation does not clearly define which powers would be assigned to the host authority of significant plus branches which may create a non-predictable environment for the parties involved.

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

Based on the drafting in paragraph 28, it is not clear when a financial institution transfers from being significant to be significant-plus once a conclusive assessment is given. In addition, what is the frequency of such assessment to be carried out by the consolidating supervisor or the home competent authority. In the absence of such clarification, there is a risk that inconsistent practices will emerge.

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

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4. What are the respondents' views on the proposed approach to introducing branch risk assessment to be performed for significant-plus branches as part of SREP (section 5.1)?

According to paragraphs 35 to 37 of the proposal, the guidelines require that a branch risk assessment should be performed on a significant-plus branch and the

risk assessment is always included as an annex to the group risk assessment or to the SREP report. It is unclear if this means that it is warranted to perform an assessment of all material risks the branch is exposed to and of the risks that it may pose to the financial system in the host Member State. The small potential benefit of performing a full SREP-type process on significant-plus branches seems greatly outweighed by the magnitude of the undertaking. Institutional-wide SREP follow up actions shall be consistently implemented throughout the organisation including the respective branch levels.

Paragraph 37 task the consolidating supervisor with obtaining certain information, while paragraph 39 ambiguously implies that the host authority should obtain the same information directly from the significant-plus branches. This potentially contradicts the intention of the proposal as described in paragraph 44, that duplication of information requests to the supervised institution should be avoided.

5. What are the respondents' views on the proposed approach to the collection and exchange of information needed for the supervision of significant-plus branches (Section 5.4)?

The construction does not clearly define which powers would be assigned to the host authority of significant plus branches. This raises concerns since it could create incentive for host authorities to abusively consider some branches as significant plus branches. Table 1 of the proposal shows that the criterion to consider a branch as significant are already very heterogeneous across member states.

Currently, the supervision of a significant-plus branch has several areas, where i) either the home supervisor has agreed upon some of the supervision activities to be carried out together with the host supervisors; ii) the activity is carried out by the host supervisor based on the agreement with the home supervisor; or iii) the supervision is mandated to the host supervisors in the legal framework stipulating the supervision of the respective significant-plus branch.

All requests regarding risk controls, risk management practices and governance frameworks related information, during on-going supervision of branches, should be channelled through the home authority, where the home authority shall hold the responsibilities of facilitating aligning with host authorities, and manage the assessment of objectives of those requests before executing them. To the extent any of the requests are not coordinated through the home authority, it is important that the supervised entity is always fully informed by the consolidating supervisor about any relevant agreements on cooperation and coordination between supervisors, to enable the supervised entity to understand the mandate used by the host supervisor for the individual supervisory activities (including ad hoc requests) related to the branch.

The EBA guideline introduces a new risk reporting level- “risks borne by the branch” - under paragraph 54(a). This leaves room for different interpretations and should therefore be limited to a more detailed level to secure harmonised usage of the reporting levels in the supervisory activities. The risks borne by the branch should always be considered under the institutional level context and exclusively to the risk that the significant-plus branch is liable.

6. What are the respondents' views on the proposed approach to the communication framework for a significant-plus branch, including communication with an institution and the branch (Section 5.6)?

A more precise definition of the criterion is needed, see introductory part. In addition, transparency must be ensured and branches must be informed about the reasons why they have been designated as significant or significant plus. Moreover, there should be an introduction of the possibility for branches to enter in a contradictory dialogue with home and host authorities regarding their potential designation as significant or significant plus.

7. What are the respondents' views to the proposed approach to the cooperation between the consolidating supervisors, home and host competent authorities for the purposes of the assessment of recovery plans (Section 5.7)?

According to paragraph 17 of the proposal where the consolidating supervisor or the home competent authority have, on the basis of their assessment, determined that a branch is important for the institution or the group, they should communicate their view to the host competent authority, independently or in the process of finalising the mapping of the institution or the group in accordance with Article 2 of the Commission Implementing Regulation (EU) 2016/99, and invite that authority to consider applying the process referred to in Article 51 of Directive 2013/36/EU to determine the branch as significant. The SBA can see no merit in changing this arrangement.

In paragraph 68 it seems if the host authority should be able to give comments regarding the recovery planning to the institution. Since the recovery planning is the responsibility of the bank, the proposal must either refer to the host supervisor giving comments to the home supervisors assessment of the recovery plan, or the host supervisor giving comments to the resolution plan of the home supervisor. A concept of “home competent authority of branch” is introduced under paragraph 16 and paragraph 70 in relation to recovery planning. This concept leaves room for different interpretations. The responsibility of overall assessment of the group recovery plan or institution's recovery plan should rest firmly with the consolidating/home



authorities, while the host authorities should be consulted and their comments considered, if agreed in the supervisory college. For the institution and its branch to interact efficiently with supervisors there must be transparency in the division of mandates between supervisors, both to support the institution but also to allow the institution to support supervisors to the greatest extent possible.

SWEDISH BANKERS' ASSOCIATION

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