

Consultation response

EBA Consultation on Draft Guidelines on supervision of significant branches

17 March 2017

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the European Banking Authority's (EBA's) consultation on Draft Guidelines on the supervision of significant branches. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our overarching comments on the consultation, which is followed by answers to the individual questions raised.

Overarching comments

AFME and its members note that in principle the EBA's initiative should result in intensified and more harmonised supervision for significant-plus branches and a smoother gradation in supervisory intensity between branches and subsidiary entities. We consider that it is important that supervisory intensity is aligned with the risk profile of an entity and its operations rather than determined mainly with reference to the legal nature of its operations, i.e. whether it operates through a branch or subsidiary structure.

We welcome the clarity that was provided at the EBA's Public Hearing that the draft guidelines are intended to support the Single Supervisory Mechanism and Banking Union principles and avoid duplicative or unnecessary work at national levels. We note from the Public Hearing that the guidelines will cover only branches from banks incorporated in EEA jurisdictions and we would recommend that this is stated explicitly in the documentation. We noted also from the EBA's Public Hearing that it is intended that supervisors should only request and share information where it exists already and that the guidelines should not therefore create new reporting requirements. Again, we consider that this should be stated explicitly. We have set out in more detail in this response also our concerns in relation to the assessment of branches on a stand-alone basis only and it should be clearly articulated that there is no expectation of imposing branch specific ICAAP or ILAA processes.

As a further observation, we would welcome specific wording within the guidelines to state explicitly the roles that home and host authorities can and cannot undertake in the supervision of significant-plus branches. As part of this statement, specific attention should be given to the intended functioning of the framework in instances where both the parent company and significant branch are located within SSM participating member states. In such circumstances, it is through the SSM framework that the ECB undertakes both the roles of home and host supervisor. The guidelines as they are currently drafted could risk interpretations concerning a role of the national competent authority in the supervision of a significant-plus branch. We would recommend therefore that where parent company and a significant-plus branch are operating within SSM member states,

the guidelines should be very clear on the role of the ECB as the home and host supervisor, as distinct from the national competent authority.

Questions

1. What are the respondents' views on the overall approach to the organisation 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)?

We note a number of points that would require additional clarification in order to ensure that the EBA's stated objective is met.

We would request that the EBA confirm the scope of application and state explicitly in the guidelines what was confirmed at the Public Hearing. As per paragraph 2 and article 51 of Directive 2013/36/EU it states that the scope would be limited to branches in Member States. However under paragraph 15 it could be understood that the initial assessment is performed across all branches. We would propose confirmation that the scope to be assessed should be limited to that are detailed in article 51 of Directive 2013/36/EU, i.e. branches in Member States.

While we understand the intentions of the EBA, to clarify the boundaries, roles and responsibilities with regards to the supervision of more significant branches, we have some concerns that assessing a branch on a stand-alone perspective could result in a risk assessment that is not fully reflective of the true risk picture. For example, where there are centralised funding models or credit management processes organised by business lines, the branch must be assessed as a part of the whole entity in order to avoid imposing additional burdens upon the Group score (which should be captured in the SREP), infringe on the operation of a branch network and restrict the free movement of funds within banking groups. There is a risk that with such focus on individual branches, that the whole view of the firm is missed with risks/issues double counted by both home and host supervisors leading to an unclear picture of risk management, governance and controls which could result in a lower SREP score without justification. It can be noted also that branches do not have a separate legal personality or status and instead form an integral part of their whole-firm, and that recovery and resolution issues cannot therefore be considered in isolation for branches.

As noted earlier, we would welcome specific wording within the guidelines to explicitly state which roles the home and host authorities can and cannot undertake in the supervision of significant branches. Without such explicit boundaries there may be scope for the duplication of supervisory activities, information requests, senior management meetings, remedial action requests etc. and adverse impacts on group-wide SREP scores. An unintended provision of a supervisory mandate to national competent authorities could also give rise to the risk of undermining the effective use and rationale for the EU passport for branches of banks.

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

The definition as proposed under paragraph 26 is very broad and should be narrowed in order to be subsequently combined with paragraphs 27 and 28. As currently drafted these criteria are too broad and open to supervisory judgement. While we understand from the Public Hearing that this is not the intention, this could result in a wide range of branches being considered as 'significant-plus' which is contrary to the objectives of these guidelines.

Furthermore, it is unclear, in the assessment of critical functions, how this should be undertaken when a number of branches are involved. For example, there could be an activity undertaken from one branch but booked in another. In that scenario, it is not clear whether the critical function would be located in the branch performing the activity or in the booking location.

A further point of clarification is on the source of information for requirements stated in the consultation paper which do not specifically mention if the host competent authority would expect the information to come from the bank, or if they would undertake an independent assessment. i.e. para 39. We would request clarification as to whether this would be determined by the host authority or requested by the institution.

In addition, we consider that in the interests of transparency, branches should be notified in a timely way as to the reasons driving any assessment as significant-plus and there should be the opportunity for management and supervisors to engage in constructive dialogue concerning the assessment.

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?

The determination of significant-plus status using the methodology for the identification of O-SII could form a suitable approach. In terms of the scoring threshold, a higher level should be considered for branches given the extent of their integration and support received from the larger whole-firm.

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)?

It should be clearly stated that there is no expectation nor mechanism through which home or host authorities would be able to impose a requirement for branch specific ICAAPs or ILAAs or additional information or reporting requirements in future. We would not support the introduction of branch specific risk assessments on a stand-alone basis and we note that the SREP is defined under Chapter II Section III of CRDIV and that it applies to 'institutions'. CRDIV Article 110 mentions that 'Competent authorities shall apply the review and evaluation process referred to in Section III of this chapter and the supervisory measures referred to in Section IV of this Chapter in accordance with the level of application of the requirements of regulations (EU) N° 575/2013 set out in Part one, Title II of that regulation'. The application of the SREP is not provided for in the relevant CRR articles and introducing this at branch level would therefore run contrary to the CRDIV Level 1 text.

In accordance with our answer to question 5, if capital and liquidity information is not available at branch level these sections will not exist within a group ICAAP or ILAA. Any approach to introduce branch risk assessment as part of SREP would also risk a duplication of the information that is required for recovery and resolution purposes.

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)?

As mentioned in our overarching comments, we noted from the EBA's Public Hearing that it is intended that supervisors should only request information with a view to its sharing where it exists already. The guidelines should not therefore result in new reporting requirements and this should be stated explicitly.

7. What are respondent's 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)?

It is important that the current framework for home-host authorities' co-ordination for the assessment of recovery plans for cross-border groups is respected. This framework, established under Articles 6 and 8 of the BRRD, requires that any decision concerning the assessment of such recovery plans and the identification of material deficiencies is a joint decision.

It should be clearly specified that whenever the home and host authorities consider that new arrangements are needed, they are coordinated at the level of the home institution of the branch. As mentioned earlier, branches do not have separate legal status and so recovery plans solely at the level of a local branch should not be requested.

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