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FRENCH BANKING FEDERATION RESPONSE TO EBA CONSULTATION PAPER

ON SUPERVISION OF SIGNIFICANT BRANCHES (EBA-CP-2016-24)

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The FBF welcomes the opportunity to comment on the EBA's Consultation relative to supervision of significant branches (EBA-CP-2016-24). Please find our main comments below and our detailed feedback within our answers to the EBA's questions.

I. General comments

Mandate and purpose of the guidelines:

First of all, we regret that the European Banking Authority (EBA) intervenes without an explicit mandate to develop its draft guidelines. CRD IV article 51 lists very vague criteria for identifying significant branches and the proposed guidelines unfortunately do not specify more clearly this vagueness, on the contrary they promote complexity by adding new criteria for identifying so-called significant-plus branches. If we understand that uncertainty of current economic and political environments could lead some "host" Member States to advocate closer supervision of significant branches within European Union, we regret the lack of transparency of the purpose of the consultation on this matter.

Scope of the guidelines:

Currently branches are not subject to a specific supervision, as they are integrated within the supervisory framework of the credit institution of which they are a part. The perimeter of the draft guidelines is not clear and does not allow to understand to what extent significant branches and by extension significant-plus would be supervised if these guidelines were to be adopted. Accordingly the scope of the guidelines requires to be clarified.

Coordination of the supervision:

The draft guidelines does not allow to understand clearly which powers would be assigned to the significant branch host competent authority. This inaccuracy is very concerning and could foster host authorities to abusively consider some branches as significant branches or by extension significant-plus. If we understand that some credit institutions could represent a significant market share in a country and impact its financial stability, we do not expect the branch of a credit institution already supervised by the Single Supervisory Mechanism through its parent company to be submitted to an additional supervision by a National competent authority This heavy supervision would be excessively redundant and converse to the purpose of the SSM. **It is therefore of the utmost importance that clarification is brought on this issue in the draft guidelines and that the SSM confirms its authority as the single supervisor of the euro area.**

Moreover we insist that the perimeter of this supervision must be framed in order to not interfere with the group recovery plans defined for the parent credit institutions (including their respective branches), and which are being discussed between home and host supervisors within Recovery Colleges.

Should this guideline be implemented, it is essential to:

- Explicit that they do not apply to NCA being part of the SSM;
- Specify the **quantitative criteria** which would lead a branch to become a significant branch or even a significant-plus. Indeed only a precise and quantifiable list of criteria will allow credit institutions to have **some visibility and predictability** with respect to the status of their branches for supervision purposes;
- Pre-define and formalize the process which will lead to the designation of “significant” or “significant plus” branches; this process shall include **a contradictory discussion** between the credit institution and its competent authority to determine if the branch should be considered a significant or significant-plus one (or not).

II. Answer to questions related to the consultation

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| 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)? |
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Firstly, we regret that the European Banking Authority (EBA) intervenes without an explicit mandate in its project of toughening article 51 of Directive EU n°2013/36/EU. Article 51 lists very vague criteria for identifying significant branches; unfortunately, the proposed guidelines do not specify more clearly this vagueness and add new criteria for identifying so-called significant-plus branches. Currently branches are not subject to a specific supervision. They are integrated within the supervisory framework of the credit institution of which they are a part. The perimeter of the draft guidelines is not clear and does not allow to understand to what extent significant branches and by extension significant-plus would be supervised if these guidelines were to be adopted. Accordingly the scope of the guidelines requires to be clarified.

Secondly, the guidelines should be much more specific with respect to the intended functioning in cases where both the mother company and the significant branch are located in SSM participating member states. It is implicit through the SSM framework that between SSM countries, the notions of Home authority and Host authority are no longer relevant, as the ECB ultimately plays both roles. However, the guidelines ignore this reality and as a consequence, their implementation when different SSM participating Member States are involved leaves room for various interpretations and are not at all helpful to clarify the articulation between the NCAs and the ECB with respect to significant branches. It has to be mentioned that on several occasions, NCAs put forward EBA guidelines or RTS/ITS to justify the permanence of national prerogatives while the SSM framework is applicable under ECB's responsibility. To simplify and clarify the debate, the FBF asks the EBA that the guidelines clearly state that the scope of application is limited to situations where either the significant branch or its mother company or both are not located within SSM participating Member States; in other words, the guidelines do not apply when both the significant branch and its mother company are within SSM participating Member States. Besides in case either the significant branch or the mother company are in an SSM participating Member State, the guidelines should be very clear on the role of the ECB in its quality of Host or Home competent authority, as opposed to the NCA.

Thirdly the consultation does not allow to understand clearly which powers would be assigned to the significant branch host competent authority. This inaccuracy is very concerning and could foster host authorities to abusively consider some branches as significant branches. Table 1 of EBA consultation paper typically shows how heterogeneous the current practices used across Member States on the criteria for the identification of significant branches are.

Finally we insist that the perimeter of this supervision must be framed in order to not interfere with the group recovery plans defined for the parent credit institutions (including the branches), and which are being discussed between home and host supervisors within Recovery Colleges.

Should this guideline be implemented, it is essential to:

- Explicit that they do not apply to NCA being part of the SSM;
- Specify the quantitative criteria which would lead a branch to become a significant branch or even a significant-plus. Indeed only a precise and quantifiable list of criteria will allow credit institutions to have some visibility and predictability with respect to the status of their branches for supervision purposes.

- Pre-define and formalize the process which will lead to the designation of “significant” or “significant plus” branches; this process shall include a **contradictory discussion** between the credit institution and its competent authority to determine if the branch should be considered a significant or significant-plus one (or not).

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

As explained in our answer to question 3, the FBF considers that O-SII criteria could be a good starting point for identifying significant-plus branches. However focusing on whether the branch is of significance importance to the financial stability in the host Member State including whether the branch performs critical functions or not, seems quite concerning.

In general, priority should be given to objective and measurable criteria against qualitative considerations. The consultation does not allow to understand clearly which criteria could be used by the significant branch Host competent authority. This inaccuracy is very concerning and could foster host authorities to abusively consider some branches as significant plus branches.

If these guidelines are effectively intended to further frame hosts’ assessment of significance, no room has to be left for such assessment in order to tighten certainty and ease the dialogue between home and host supervisors. This can only be fulfilled by clarifying criteria of article 51 of CRD IV relative to significance and criteria of these guidelines with respect to significance-plus.

Indeed existing cases of identification of significant branches by host authorities were always opaque and with neither notification to the parent entity nor ability to discuss the assessment with the host. This lack of transparency is one of the key issue of this consultation that has to be appropriately tackled by the EBA.

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 FBF recognizes that the methodology for the identification of O-SII could be a sensible approach, provided the exact same methodology as for credit institutions is used and for the sole purpose of determination of the significance plus category. Individual branches should of course not be subject to national O-SII framework and not be dealt with as O-SIIs institutions (e.g. O-SII buffer is entirely not relevant for branches), that is the reason why appropriate thresholds should be calibrated if O-SII criteria will in fine be retained.

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)?

The FBF is strongly opposed to a SREP approach performed at branch level. As a matter of fact, the SREP is defined under Chapter II section III of CRD IV and applies to “institutions”. Article 110 mentions “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 branch level is not provided for in the relevant CRR articles. Introducing a SREP approach at branch level would purely override the level 1 text.

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 FBF does not agree with the EBA that this guideline would not constitute addition burden for institutions. Indeed, all the documentation the host authority needs to provide for the home authority will necessarily have to be produced by the concerned branch. Moreover, additional work will be requested due to the intensified supervisory activities in relation to a significant-plus branch, such as the Annex to the SREP (including the appropriateness of internal capital and liquidity allocation to the risk exposures borne by the branch on the basis of the group ICLAAP) and the additional specific on-the-spot checks and inspections. These supervisory activities will be performed in cooperation (information requests, interviews, etc.) with the institution. Certainly, this will cause an additional burden. The same goes for the input from the host authority in relation to the recovery plan, as set out in paragraph 69 of the draft guidelines. We expect that this will also result in additional information requests to the branch/institution.

We consequently ask the EBA to clarify that any assessment of significance performed by a host supervisor should primarily rely on current and existing regulatory reporting and avoid situations where ad hoc reporting (without any common template) would be required by hosts.

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)?

We take the opportunity to once again remind the EBA that transparency with institutions is key, therefore a communication framework should also be set up between home and host supervisors on one hand and the bank and its targeted branch on the other hand. Branches must be informed about the reasons why they have been designated as significant or significant plus.

In paragraph 59 EBA proposes in the consultation to ensure that macroprudential measures and information influencing significant-plus branches should be forwarded between regulators. Similarly, this requirement should be extended to include also significant branches and their parent company.

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)?

It is important that the current framework for home-host authorities’ co-ordination for the assessment of Recovery Plans for cross-border groups be respected. This framework, established by art.6 and 8 of the BRRD, requires that any decision concerning the assessment of Recovery Plans and the identification of material deficiencies be duly reflected in a joint decision.

In addition, it should be clearly specified that, whenever the home and host authorities convene that new arrangements are required to ensure coordination of measures at the level of the home institution and at branch level, in no case Recovery Plans can be claimed by host authorities at the level of local branches, because the latter have no separate legal status.

We remind that the Recovery Plans and related confidential information are already shared but only within a restricted number of competent authorities under strict conditions defined in article 98 of the BRRD and shall be duly respected.