

EBA-CP-2019-12

13 November 2019

RESTRICTED

Consultation Paper

Draft amended Regulatory Technical Standards and Draft amended Implementing Technical Standards on Passport Notifications under Articles 35, 36 and 39 of Directive 2013/36/EU

Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	6
4. Draft amended regulatory technical standards	9
6. Accompanying documents	34
6.1 Draft cost-benefit analysis / impact assessment	34

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper.

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 13 February 2020. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

The Consultation Paper deals with the review of two sets of technical standards on passport notification, developed by the EBA in accordance with the mandate set out in Articles 35, 36 and 39 of Directive 2013/36/EU as subsequently amended, and enacted by the European Commission under Commission Delegated Regulation (EU) No 1151/2014 and Commission Implementing Regulation (EU) No 926/2014.

Since their entry into force, the two Commission Regulations have significantly contributed to the convergence of supervisory practices across the EU, smoothening passport notifications by credit institution and deepening the internal market. Practice however has shown the need for clarification as to the information to be provided by credit institutions in order to allow a better assessment of the passport notification and the credit institution's arrangements to carry on the planned activities. The review of the two Regulations therefore aims at improving the quality and consistency of information to be provided by a credit institution notifying their home competent authorities when it intends to open a branch or provide services in another Member State, as well as the communication between home and host authorities.

The amendments focus on the quality and clarity of the information to be provided by the credit institutions to their home competent authorities in the passport notification, as well as to the communication between home and host authorities. Such amendments relate to both the information requirements set out in Regulation 1154/2014 and to the forms and templates contained in the Annexes to Regulation 926/2014. The most material changes focus on the request to the credit institution to indicate in a manner as accurate as possible the intended start date of each activity for which the notification is submitted, rather than just of the core business activities as currently envisaged by the Regulations. Such change applies to both the branch and services the passport notification. This amendment aims at allowing the competent authorities a more accurate and complete picture of institutions' planned activities and its arrangements to carry them on, and it is considered a very relevant piece of information to allow competent authorities to perform a complete and accurate assessment of the notification.

With regard to the establishment of branches, additional granularity has been included in relation to the financial plan. Assumptions underpinning forecasts are now expressly requested to be included in the notification.

In respect of the branch planned termination, an express requirement of a statement by an external auditor that the credit institution no longer holds deposits nor repayable funds from the public through the branch has been included in the communication in order to enhance factual certainty and reliability.

Furthermore, in order to improve the efficiency of communication between the credit institution and its home authority as well as between home and host authorities, some minor amendments

have also been made in the forms and templates such as update of legal references; clearer differentiation –applicable to branches only- between first notification and notification of changes, addition of the credit institution’s national reference code as available in the credit institution register maintained by the EBA, and of the Legal Entity Identifier (LEI) where available, indication of the competent department and relevant email address.

Next steps

This Consultation paper is published for a 3 months consultation period. The revised draft RTS and ITS will be submitted to the European Commission for endorsement before being published in the Official Journal of the European Union.

3. Background and rationale

3.1 Introduction and reasons for the review

Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as subsequently amended, sets out requirements concerning the exercise by credit institutions of the freedom of establishment and the freedom to provide services and mandates the EBA to develop regulatory technical standards (RTS) specifying the information to be notified pursuant to Articles 35, 36 and 39 of that Directive. The same provisions also mandate the EBA to develop implementing technical standards (ITS) in order to establish standard forms, templates and procedures for notifications performed pursuant to Articles 35, 36 and 39.

The EBA has delivered such mandates by developing and submitting to the European Commission for endorsement both the Final Draft RTS and the Final Draft ITS on passport notifications on 13 December 2013¹. The European Commission subsequently endorsed the RTS by enacting Commission Delegated Regulation (EU) No 1151/2014 and the ITS by enacting Commission Implementing Regulation (EU) No 926/2014.

As recognized by the EBA Report on the peer review on the RTS published in July 2018² ('Report'), the two Regulations have significantly improved the convergence of supervisory practices and smoothened the procedures for passport notifications, providing an important contribution to the effectiveness of the internal market. The Report has also identified several areas of desired modifications to the technical standards that would improve the quality and consistency of passport notifications and the ability of competent authorities to assess these. Upon the competent authorities' request, the EBA has therefore decided in accordance with Article 29(d) of Regulation (EU) 1093/2010 establishing the EBA, as subsequently amended, to revise both Commission Regulation 1151/2014 and Commission Regulation 926/2014, with a view to updating the information requirements to be notified by the credit institution to the home competent authority. The ultimate goal of the technical standards review is to better clarify credit institutions' information requirements in order to facilitate the accuracy, comprehensiveness and consistency of supervisory assessment of both branch and services passport notifications. The amended binding technical standards also set out some minor drafting amendments aimed at improving the efficiency of communication with the home authority and between home and host authorities. The Consultation Paper at hand presents the amended RTS and ITS, reflecting these modifications.

¹ The Final Draft RTS is available here <https://eba.europa.eu/documents/10180/522312/EBA-RTS-2013-08+%28RTS+on+Passport+Notifications%29.pdf/c03df2c9-cd8c-42e6-b3fa-1df65b156850>; the Final Draft ITS is available here <https://eba.europa.eu/documents/10180/522312/EBA+ITS+2013+05+%28ITS+on+Passport+Notifications%29.pdf/b584af51-1c4c-4301-93ee-9ed0e5f9b6ec>.

² EBA Peer Review on the RTS on Passport Notification, 10 July 2018, <https://eba.europa.eu/documents/10180/2087449/Report+on+the+peer+review+of+the+RTS+on+passport+notifications.pdf>

3.2 Material amendments

The material amendments focus on the quality and clarity of the information to be provided by the credit institutions to their home competent authority in the passport notification. They relate to both the information requirements set out in Regulation 1154/2014 and to the forms and templates contained in the Annexes to Commission Implementing Regulation (EU) No 926/2014.

With regard to both branch and services notification, the following material amendments have been introduced:

- Requirement to indicate the intended start date of each passported activities, for both the branch and the services passport notification, in a manner *as accurate as possible*. Unlike the version currently in force, the draft amended technical standards require the specification of the 'intended start date' for *each* activity for which the notification is submitted rather than just for the core business activities. Practical experience has shown that the version in force, by allowing a sort of 'global' notification for all activities that the EU legal framework consents to be passported, whilst allows credit institution to reach efficiencies by submitting only one notification, does not allow the competent authorities to carry out the comprehensive and accurate assessment they are required to for each activity that is included in the notification. This amendment, therefore, aims at providing competent authorities with a more accurate and complete picture of institutions' planned activities, and of their arrangements to carry them out and it is considered a very relevant piece of information to allow them performing an accurate assessment of the notification. Such proposed amendments are set out in the RTS and in Annexes I and V to the ITS.

With regard to the branch notification only, the following amendments have been introduced:

- Express differentiation between the first notification and the notification of changes in the branch particulars. In case of notification of changes, the draft amended Annex I to the ITS expressly requires the credit institution to indicate only the information that has changed. In case of cessation of an activity previously notified, credit institutions have to indicate the date where the provision of a previously notified activity has ceased to be carried out.
- Additional granularity in relation to the financial plan in section 2.3.1 of Annex I. Assumptions of forecasts are expressly requested.
- Express requirement, in case of communication of the branch planned termination, of a statement by an external auditor that the credit institution no longer holds deposits nor repayable funds from the public through the branch has been included in order to enhance transparency and the general interest of safety of deposits (Annex IV). This requirement replicates at the branch level the approach commonly followed by supervisors in the case of credit institutions' notification of voluntary withdrawal of the authorisation.

With regard to the communication of own funds from the home to the host authority, Annex III has been amended to include the communication of the relevant data on own funds (amount, composition and requirements) at both individual and consolidated level, the latter where applicable and available to the home authority. By this amendment, the pursued objective is the increase the efficiency and cooperation between home and host authorities.

3.3 Other amendments

As part of the overall goal to improve the clarity and quality of the information in order to enable a better assessment of the notification by the competent authorities, draft amended Annex I and Annex V expressly require the indication of the Legal Entity Identifier ('LEI') – where available – together with national reference code of the credit institution.

Some minor amendments have also been made such as update of legal references to services to be rendered in accordance with the Directive 2014/65/EU on markets in financial instruments and Directive 2015/2366/EU on payment services in the internal market and addition of some information items in Annexes II, IV and VI relating to the communication by the credit institution with the relevant competent authority(ies), namely, the name of the home authority department and reference email.

4. Draft amended regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No .../..

of XXX

[...]

amending Commission Delegated Regulation (EU) No 1151/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the information to be notified when exercising the right of establishment and the freedom to provide services

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and Directive 2006/49/EC³, and in particular Article 35(5), Article 36(5) and Article 39(4) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 1151/2014 lays down the information for notification by credit institutions for the exercise of the right of establishment and the freedom to provide services.
- (2) With a view to fostering convergence in the competent authorities' assessment practices of the notification submitted by credit institutions, the information laid down in Commission Delegated Regulation (EU) No 1151/2014 should be further detailed. Furthermore, since the entry into force of that Regulation, some legal references should be updated in order to ensure legal certainty.
- (3) The information provided by the credit institution with a branch passport notification should be sufficiently detailed to ensure that the competent authority of the home Member State where performs an accurate and comprehensive assessment of the credit institution's adequacy to carry out the activities for which notification is submitted. To this purpose, the information provided should indicate the intended start date of each activity rather than just the intended start date of the core business activities. Similarly, the financial plan containing forecasts for the the balance sheet and profit and loss account covering a three year period should include the underlying assumptions.
- (4) In order to increase the efficiency in the identification of the credit institution in the communication between home and host authorities or by the credit institution, as the case may

³ OJ.....



be, the communication should indicate the credit institution's national reference code and the Legal Entity Identifier ('LEI') where available.

- (5) Consistent with the general interest of safety of deposits and with a view to enhancing factual certainty and reliability, when submitting a communication relating to the planned termination of a branch, the credit institution should include a statement by an external auditor certifying that the branch no longer holds deposits or other repayable funds.
- (6) With regard to the service passport notification, similarly to the requirement for branch passport notification, the information provided by the credit institution should be sufficiently detailed to ensure that the competent authority of the home Member State performs an accurate and comprehensive assessment of the credit institution's adequacy to carry out the activities for which notification is submitted. To this purpose, the information provided should indicate the intended start date of each activity rather than just the intended start date of the core business activities.
- (7) The provisions in this Regulation should be read along with the provisions in Commission Implementing Regulation (EU) No XX/XXXX, amending Commission Implementing Regulation (EU) No 926/2014⁴.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (9) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁵.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Commission Delegated Regulation (EU) No 1151/2014

Commission Delegated Regulation (EU) No 1154/2014 is amended as follows:

1. In Article 3, paragraph 1, point (a) is replaced by the following:
'(a) name and address of the credit institution and intended principal place of business of the branch;'
2. In Article 3, paragraph 2, point (a)(ii) is replaced by the following:
'(ii) a list of the activities in Annex I to Directive 2013/36/EU that the credit institution intends to carry out in the host Member State, including the intended start date for each activity. In case of cessation of activities, the indication of the ceased activities;'

Question 1: Do you agree that requiring the credit institution submitting the passport notification to indicate the intended start date of each activity which the notification refers to, rather than only the core activities, will support the competent authorities' comprehensive and accurate assessment of the passport notification and provide them with an accurate picture of the credit institution's planned activities as well as their ability to carry them on?

⁴ Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards 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 according to Directive 2013/36/EU of the European Parliament and of the Council Text with EEA relevance (OJ L 254, 28.8.2014, p. 2).

⁵ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

3. In Article 3, paragraph 2, point (a)(iii) is replaced by the following:

‘(iii) ‘an indication of the activities that will constitute the core business in the host Member State;’

4. In Article 3, paragraph 2, point (b)(iii) is replaced by the following:

‘(iii) where the branch is expected to carry out one or more of the investment services and activities defined in point 2 of Article 4(1) of Directive 2014/65/EU, a description of the following arrangements:’

5. In Article 3, paragraph 2, point (b)(iii), second indent is replaced by the following:

‘— the arrangements for compliance with the obligations laid down in Articles 24, 25, 26, 27 and 28 of Directive 2014/65/EU and measures adopted pursuant thereto by the relevant competent authorities of the host Member State;’

6. In Article 3, paragraph 2, point (d)(i) is replaced by the following:

‘— a financial plan containing forecasts for balance sheet and profit and loss account covering a period of three years, comprising the underlying assumptions;’

Question 2: Do you agree that the indication of the underlying assumption used to develop the forecasts will support the competent authorities’ comprehensive and accurate assessment of the branch passport notification?

7. In Article 4, paragraph 2, the following point (d) is added:

‘(d) where the branch takes or took deposits and other repayable funds in the exercise of its activities, a statement by an external auditor that the credit institution no longer holds deposits or other repayable funds from the public through the branch.’

Question 3: Do you agree that requesting a statement by an external auditor that the credit institution no longer holds deposits or other repayable funds from the public through the branch in the relevant host Member State is adequate to ensure the transparency of the process and the protection of depositors?

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

*[For the Commission
On behalf of the President]*

[Position]



5. Draft amended implementing technical standards

COMMISSION IMPLEMENTING REGULATION (EU) No .../... amending Commission Implementing Regulation (EU) No 926/2014 laying down implementing technical standards 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 according to Directive 2013/36/EU of the European Parliament and of the Council

of **XXX**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and Directive 2006/49/EC⁶, and in particular Article 35(5), Article 36(5) and Article 39(4) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 926/2014 sets out the standard forms, templates and procedures for notifications for the exercise of the right of establishment and the freedom to provide services by credit institutions.
- (2) The information set out in such standard forms and templates has to be further detailed consistently with the requirements laid down in Commission Delegated Regulation XX/XXXX [amending Commission Delegated Regulation (EU) No 1151/2014]. Furthermore, since the entry into force of Commission Implementing Regulation (EU) No 926/2014, some legal references should be updated in order to ensure legal certainty.
- (3) In order to provide more clarity to the branch passport communication, it is opportune to specify that the latest available information on own funds is requested both at the credit institution individual and consolidated reporting level, where applicable and where information at consolidated level is available to the home competent authority.
- (4) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (5) EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁷.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Commission Implementing Regulation (EU) No 926/2014

Commission Implementing Regulation (EU) No 926/2014 is amended as follows:

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⁷ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

1. In Article 6, paragraph 1 is replaced by the following:

‘1. The competent authorities of the home Member State shall use the form laid down in Annex II to communicate a branch passport notification to the competent authorities of the host Member State together with a copy of the branch passport notification and with the latest available information on own funds using the form laid down in Annex III. Such latest available information on own funds of the credit institution submitting the passport notification shall be indicated at both the individual and consolidated level, where applicable and available to the home competent authority.’

Question n. 4: Do you agree that the the indication of the latest available information on the credit institution’s own funds at the individual and at the consolidated level where applicable and available, is necessary to the comptent authority will increse the efficient communication and cooperation between home and host authorities?

2. In Article 8, paragraph 2 is replaced by the following:

‘2. Credit institutions shall use the form laid down in Annex IV to notify a change in branch particulars notification to the competent authorities of the home and host Member States where the change concerns a planned termination of the operation of the branch. Where the branch takes or took deposits and other repayable funds, the credit institution shall also be required to submit a statement by an external auditor that the branch no longer holds deposits or other repayable funds from the public.’

Question 5: see Question 3

3. Annexes I to VI are amended in accordance with the Annex to this Regulation.

Article

Entry into force

This Regulation shall enter into force on the the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

On behalf of the President

[Position]

ANNEX

ANNEX I

Form for the submission of a branch passport notification or a change in a branch particulars notification

Where credit institutions notify changes in branch particular notifications to competent authorities of home and host Member States, credit institutions shall only complete the parts of the form which contain information that has changed.

1. Contact information

Type of notification	<input type="checkbox"/> Initial notification of branch passport notification <input type="checkbox"/> Notification of change in branch particulars notification
Host Member State in which the branch is to be established:	<i>[to be completed by the credit institution]</i>
Name and national reference code of the credit institution as available in the credit institution register maintained by the EBA:	<i>[to be completed by the credit institution]</i>
LEI of the credit institution:	<i>[to be completed by the credit institution]</i>
Address of the credit institution in the host Member State from which documents may be obtained:	<i>[to be completed by the credit institution]</i>
Intended principal place of business of the branch in the host Member State:	<i>[to be completed by the credit institution]</i>
Date on which the branch intends to commence its activities:	<i>[to be completed by the credit institution]</i>
Name of contact person at the branch:	<i>[to be completed by the credit institution]</i>
Telephone number:	<i>[to be completed by the credit institution]</i>
E-mail:	<i>[to be completed by the credit institution]</i>

2. Programme of operations

2.1. Types of business envisaged

- 2.1.1. Description of the main objectives and business strategy of the branch and an explanation of how the branch will contribute to the strategy of the institution and, where applicable, of its group

[to be completed by the credit institution]

2.1.2. Description of the target customers and counterparties

[to be completed by the credit institution]

2.1.3. List of the activities referred to in Annex I to Directive 2013/36/EU that the credit institution intends to carry out in the host Member State with the indication of the activities that will constitute the core business in the host Member State, including the intended start date for each activity (as accurate as possible).

No.	Activity	Activities that the credit institution intends to start carrying out (fill in with "S") / or to cease carrying out (fill in with "C")	Activities that will constitute the core business	Intended start or cease date for each activity
1.	Taking deposits and other repayable funds			
2.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
3.	Financial leasing			
4.	Payment services as defined in Article 4(3) of Directive (EU) 2015/2366 of the European Parliament and of the Council (*)			
4a.	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account			
4b.	Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account			
4c.	Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider: <ul style="list-style-type: none"> — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders 			

4d.	Execution of payment transactions where the funds are covered by a credit line for a payment service user: — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders			
4e. (***)	— Issuing of payment instruments — Acquiring of payment transactions			
4f.	Money remittance			
4g.	Payment initiation services			
4h.	Account information services			
5.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4			
6.	Guarantees and commitments			
7.	Trading for own account or for account of customers in any of the following:			
7a.	— Money market instruments (e.g. cheques, bills, certificates of deposits)			
7b.	— Foreign exchange			
7c.	— Financial futures and options			
7d.	— Exchange and interest-rate instruments			
7e.	— Transferable securities			
8.	Participation in securities issues and the provision of services related to such issues			
9.	Advice to undertakings on capital structure, industrial strategy, and related questions and advice as well as services relating to mergers and the purchase of undertakings			
10.	Money broking			
11.	Portfolio management and advice			
12.	Safekeeping and administration of securities			
13.	Credit reference services			
14.	Safe custody services			

15.	Issuing electronic money			
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(*)Directive 2015/2366/EC of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (OJ L 337, 23.12.2015, p. 35–127).

(**)Does the activity referred to in point 4d include the granting of credits in accordance with Article 18(4) of Directive (EU) 2015/2366?

☐ yes ☐ no

(***) Does the activity referred to in point 4e include the granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366?

☐ yes ☐ no

2.1.4. List of the services and activities that the credit institution intends to carry out in the host Member State, and which are provided for in Sections A and B of Annex I to Directive 2014/65/EU of the European Parliament and of the Council ⁽⁸⁾, when referring to the financial instruments provided for in Section C of Annex I of that Directive

Financial Instruments	Investment services and activities									Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	A9	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C1																
C2																
C3																
C4																
C5																
C6																
C7																
C8																
C9																
C10																
C11																

~~Note 1:~~

⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 243, 12.6.2014, p. 349).

Row and column headings are references to the relevant section and item numbers in Annex I to Directive 2014/65/EU (e.g. A1 refers to point 1 of Section A of Annex I)

2.2. *Structural organisation of the branch*

- 2.2.1. Description of the organisational structure of the branch, including functional and legal reporting lines and the position and role of the branch within the corporate structure of the institution and, where applicable, of its group

[to be completed by the credit institution]

The description can be supported by relevant documents, such as an organisational chart

- 2.2.2. Description of the governance arrangements and internal control mechanisms of the branch, including the following information:

- 2.2.2.1. risk management procedures of the branch and details of liquidity risk management of the institution, and where applicable, of its group

[to be completed by the credit institution]

- 2.2.2.2. any limits that apply to the activities of the branch, in particular to its lending activities

[to be completed by the credit institution]

- 2.2.2.3. details of the internal audit arrangements of the branch, including details of the person responsible for these arrangements and, where applicable, details of the external auditor

[to be completed by the credit institution]

- 2.2.2.4. anti-money laundering arrangements of the branch including details of the person appointed to ensure compliance with these arrangements

[to be completed by the credit institution]

-
- 2.2.2.5. controls over outsourcing and other arrangements with third parties in connection with the activities carried out in the branch that are covered by the institution's authorisation

[to be completed by the credit institution]

2.2.3. Where the branch is expected to carry out one or more of the investment services and activities defined in point 2 of Article 4(1) of Directive 2014/65/EU, a description of the following arrangements:

2.2.3.1.arrangements for safeguarding client money and assets

[to be completed by the credit institution]

2.2.3.2.arrangements for compliance with the obligations laid down in Articles 24, 25, 27 and 28 of Directive 2014/65/EU and measures adopted pursuant thereto by the relevant competent authorities of the host Member State

[to be completed by the credit institution]

2.2.3.3.internal code of conduct including controls over personal account dealing

[to be completed by the credit institution]

2.2.3.4.details of the person responsible for dealing with complaints in relation to the investment services and activities of the branch

[to be completed by the credit institution]

2.2.3.5.details of the person appointed to ensure compliance with the arrangements of the branch relating to investment services and activities

[to be completed by the credit institution]

2.2.4. details of professional experience of the persons responsible for the management of the branch

[to be completed by the credit institution]

2.3. *Other information*

2.3.1. Financial plan containing forecasts for balance sheet and profit and loss account, covering a period of three years comprising the underlying assumptions

[to be completed by the credit institution]

This information can be provided as an attachment to the notification

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

[to be completed by the credit institution]

- 2.3.3. Details of the branch's IT arrangements

[to be completed by the credit institution]

ANNEX II

Form for the communication of branch passport notification

Competent authorities of the home Member State:

Name of the relevant department:

General e-mail address of the relevant department (if any):

Name of the contact person:

Telephone number:

E-mail:

Address of the competent authorities of the host Member State:

[Date]

Ref:

Communication of branch passport notification

[The communication shall include at least the following information:

- name and national reference code of the credit institution as available in the credit institution register maintained by the EBA;
- LEI of the credit institution;
- competent authorities responsible for the authorisation and supervision of the credit institution;
- statement on the credit institution's intention to carry out activities in the territory of the host Member State, including the date of receipt of the branch passport notification containing information that is assessed to be complete and correct;
- name and contact details of the persons responsible for the management of the branch;
- name and contact details of the Union deposit guarantee and investor protection schemes of which the institution is a member and which cover the activities and services of the branch.]

[Contact details]

ANNEX III

Form for the communication of the amount and composition of own funds and own funds requirements

1. Amount and composition of own funds at the individual level and consolidated (where applicable and available)

Credit institution's name: _____		
Reference date (Individual level): _____		
Reference date (Consolidated level – where applicable and available): _____		
Item All references are to the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾	<u>Individual level</u> Amount (in million EUR)	<u>Consolidated level</u> (where applicable and available) Amount (in million EUR)
Own funds Articles 4(1)(118) and 72	<i>[data as reported in row 010 in Template 1 of Annex 1 of Commission Implementing Regulation (EU) No 680/2014 ⁽²⁾]</i>	<i>[data as reported in row 010 in Template 1 of Annex 1 of Commission Implementing Regulation (EU) No 680/2014 ⁽²⁾]</i>
Tier 1 capital Article 25	<i>[data as reported in row 015 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 015 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Common Equity Tier 1 capital Article 50	<i>[data as reported in row 020 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 020 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Additional Tier 1 capital Article 61	<i>[data as reported in row 530 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 530 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Tier 2 capital Article 71	<i>[data as reported in row 750 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 750 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>

⁽¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([OJ L 176, 27.6.2013, p. 1](#)).

⁽²⁾ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council ([OJ L 191, 28.6.2014, p. 1–1861](#))

2. Own fund requirements

Credit institution's name: _____		
Reference date (Individual level): _____		
Reference date (Consolidated level – where applicable and available): _____		
Item	Individual level	Consolidated level (where applicable and available)
All references are to the provisions of Regulation (EU) No 575/2013	Amount (in million EUR)	Amount (in million EUR)
Total risk exposure amount Articles 92(3), 95, 96 and 98	<i>[data as reported in row 010 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 010 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Risk weighted exposure amounts for credit, counterparty credit and dilution risks and free deliveries Points (a) and (f) of Article 92(3)	<i>[data as reported in row 040 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 040 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount for settlement/delivery Point (c) (ii) of Article 92(3) and point (b) of Article 92(4)	<i>[data as reported in row 490 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 490 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount for position,	<i>[data as reported in row 520 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 520 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>

foreign exchange and commodities risks Points (b)(i), (c)(i) and (c)(iii) of Article 92(3) and point (b) of Article 92(4)		
Total risk exposure amount for operational risk Point (e) of Article 92(3) and point (b) of Article 92(4)	<i>[data as reported in row 590 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 590 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Additional risk exposure amount due to fixed overheads Articles 95(2), 96(2), 97 and 98(1) point (a)	<i>[data as reported in row 630 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 630 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount for credit valuation adjustment Point (d) of Article 92(3)	<i>[data as reported in row 640 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 640 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount related to large exposures in the trading book Point (b)(ii) of Article 92(3) and Articles 395 to 401	<i>[data as reported in row 680 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 680 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Other risk exposure amounts Articles 3, 458, 459 and 500 and risk exposure amounts which cannot be assigned to one of the other items of this table	<i>[data as reported in row 690 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>	<i>[data as reported in row 690 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>

ANNEX IV

Form for the submission of a change in branch particulars notification which concerns a planned termination of the operation of a branch

Name of the contact person at the credit institution or branch:

Telephone number:

E-mail:

Address of the competent authorities of the home Member State:

Address of the competent authorities of the host Member State:

[Date]

[Ref:]

Submission of a change in branch particulars notification which concerns a planned termination of the operation of a branch

[The notification shall include at least the following information:

- name and national reference code of the credit institution as available in the credit institution register maintained by the EBA;
- LEI of the credit institution;
- name of the branch in the territory of the host Member State;
- competent authorities responsible for the authorisation and supervision of the credit institution;
- statement on the credit institution's intention to terminate the operation of the branch in the territory of the host Member State and the date by which the termination will be effective;
- name and contact details of the persons who will be responsible for the process of terminating the operation of the branch;
- estimated schedule for the planned termination;
- information on the process of terminating the business relations with branch customers.]
- where the branch provides activity N. 1 (Taking deposits and other repayable funds) under section 2.1.3

of Annex I, statement by an external auditor that the branch no longer holds deposits or other repayable funds from the public.

[Contact details]

ANNEX V

Form for the submission of services passport notification

1. Contact information

Type of notification	Services passport notification
Host Member State in which the credit institution intends to carry out its activities:	
Name and national reference code of the credit institution as available in the credit institution register maintained by the EBA:	
LEI of the credit institution:	
Address of the head office of the credit institution:	
Name of contact person at the credit institution:	
Telephone number:	
E-mail:	

2. List of the activities referred to in Annex I to Directive 2013/36/EU that the credit institution will carry out in the host Member State with the indication of the activities that will constitute the core business of the credit institution in the host Member State, including the intended commencement date for each activity (as accurate as possible)

No.	Activity	Activities that the credit institution intends to carry out (fill in with "X")	Activities that will constitute the core business	Intended start date for each activity
1.	Taking deposits and other repayable funds			

2.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
3.	Financial leasing			
4.	Payment services as defined in Article 4(3) of Directive 2015/2366/EC of the European Parliament and of the Council (*)			
4a	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account			
4b	Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account			
4c	Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider: <ul style="list-style-type: none"> – execution of direct debits, including one- off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			
4d	Execution of payment transactions where the funds are covered by a credit line for a payment service user (**): <ul style="list-style-type: none"> – execution of direct debits, including one- off direct debits – execution of payment transactions through a payment card or a similar device – execution of credit transfers, including standing orders 			

4e(***)	<ul style="list-style-type: none"> – Issuing of payment instruments – Acquiring of payment transactions 			
4f	Money remittance			
4g	Payment initiation services			
4h	Account information services			
5.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4			
6.	Guarantees and commitments			
7.	Trading for own account or for account of customers in any of the following:			
7a	<ul style="list-style-type: none"> – money market instruments (e.g. cheques, bills, certificates of deposits) 			
7b	<ul style="list-style-type: none"> – foreign exchange 			
7c	<ul style="list-style-type: none"> – financial futures and options 			
7d	<ul style="list-style-type: none"> – exchange and interest-rate instruments 			
7e	<ul style="list-style-type: none"> – transferable securities 			
8.	Participation in securities issues and the provision of services related to such issues			
9.	Advice to undertakings on capital structure, industrial strategy, and related questions and advice as well as services			

	relating to mergers and the purchase of undertakings			
10.	Money broking			
11.	Portfolio management and advice			
12.	Safekeeping and administration of securities			
13.	Credit reference services			
14.	Safe custody services			
15.	Issuing electronic money			

(*)Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market ([OJ L 337, 23.12.2015, p. 35–127](#)).

(**) Does the activity referred to in point 4d include the granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366?

☐ yes ☐ no

(***) Does the activity referred to in point 4e include the granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366?

☐ yes ☐ no

3. List of the services and activities that the credit institution intends to carry out in the host Member State, and which are provided for in Sections A and B of Annex I to Directive () 2014/65/EU, when referring to the financial instruments provided for in Section C of Annex I of that Directive

Financial Instrument	Investment services and activities										Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	A 9	A 10	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C1																	
C2																	

C3																
C4																
C5																
C6																
C7																
C8																
C9																
C10																
C11																

Note 1:

Row and column headings are references to the relevant section and item numbers in Annex I to Directive 2014/65/EU on markets in financial instruments (e.g. A1 refers to point 1 of Section A of Annex I)

ANNEX VI

Form for the communication of services passport notification

Competent authorities of the home Member State:

Name of the relevant department:

General e-mail address of the relevant department (if any):

Name of the contact person:

Telephone number:

E-mail:

Address of the competent authorities of the host Member State:

[Date]

Ref:

Communication of services passport notification

[The communication shall include at least the following information:

- name and national reference code of the credit institution available in the credit institution register maintained by the EBA;
- LEI of the credit institution;
- competent authorities responsible for the authorisation and supervision of the credit institution;
- statement on the credit institution's intention to carry out activities in the territory of the host Member State in the exercise of the freedom to provide services.]

[Contact details]

6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA) which analyses ‘the potential related costs and benefits’.

This analysis presents the IA of the main policy options included in this Consultation Paper on the changes proposed to (i) the RTS on the information to be notified when exercising the right of establishment and the freedom to provide services, supplementing Directive 2013/36/EU, and (ii) 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 according to Directive 2013/36/EU.

The IA is high level and qualitative in nature.

A. Problem identification

Pursuant to Article 35(5) of Directive 2013/36/EU, technical standards have been adopted in 2014 to provide additional information to institutions and competent authorities for the process and information needed when an institution exercises the right of establishment and the freedom to provide services. Specifically, the existing RTS and ITS lay down the information that a credit institution has to provide to the home competent authority when it intends to open a branch or to provide services in another Member State, and the communication to be provided in turn by the home competent authority to the host competent authority.

The practical application of these technical standards since 2014 has been assessed in a peer review report conducted by the EBA and published in July 2018.⁹ The report identifies several areas of desired modifications to the technical standards that would improve the quality and consistency of passport notifications and the ability of competent authorities to assess these. The consultation paper at hand presents the amended RTS and ITS.

B. Policy objectives

The draft modified RTS and ITS (including Annexes) in this consultation paper aim at improving the quality and consistency of information provided by an institution notifying their home authorities when it intends to open a branch or provide services in another Member State. Further, the draft amended technical standards aim at providing competent authorities with a more complete and

⁹ [EBA Report on the Peer Review of the RTS on Passport Notification](#)

in-depth picture of the institutions' planning and assumptions, thereby allowing enhanced judgement by and dialogue with competent authorities.

C. Baseline scenario

Section C. presents the main policy options discussed and the decisions made during the amendments to the technical standards. Advantages and disadvantages, as well as potential costs and benefits of the policy options and the preferred options resulting from this analysis are assessed below.

The changes proposed to the technical standards can be broadly categorised into two groups: one representing minor changes, including marginal content, legal references updates and other editing changes, and another group containing more substantial changes related to the content of the information competent authorities would receive. The policy options considered as part of the drafting and outlined below are structured along this categorisation.

Additional information and details of mostly minor nature

Option 1a: Add further information items, clarifications on existing items and other minor changes throughout the information that has to be provided by institutions and communicated between home and host competent authorities.

Option 1b: Do not make any changes and keep the technical standards as they are.

The EBA Report on the Peer Review of Passport Notification provided crucial insights into the practical experiences of information sharing as part of the process of passport notifications. The outcome of the peer review suggests that i) information provided by institutions is not always consistent across notifications in terms of the level of detail provided, ii) certain information items specifically mentioned in new regulations are not included in the information templates of the current ITS Annexes, iii) practical use and application of the technical standards varies, iv) template formats and labelling could be clarified.

These findings represent factors that may impact the consistency of the information provided by institutions and the ability of competent authorities to make as comprehensive and informed an assessment as possible. Whilst changes and additions to the technical standards and information templates may require some minor additional short-term costs for institutions and competent authorities, these initial transitional costs are assessed to be outweighed by the benefits that changes will bring to the sharing of information.

Therefore, Option 1a has been assessed as the preferred option and the amended technical standards propose additional details and information of mostly minor nature. Specifically, it is proposed to:

- a) Include more information on the legal entities in the Annexes (national reference code available in the credit institutions register maintained by the EBA and LEI code) to improve consistency and usability of information;
- b) Update specific legal references to ensure alignment with other updated legal texts;
- c) Format certain information tables (eg. additional headings) in the ITS Annexes to improve clarity for users;
- d) Add to the list of services and activities to be considered by the institution in Annex I and V to align with MiFID II (Directive 2014/65/EU) and with PSD2 Annex (Directive (EU) 2015/2366);
- e) Explicitly differentiate in Annex I between new notifications and changes to existing notifications to formalise current practices;
- f) Own funds requirements and composition to be communicated from the home to the host at both the institution and consolidated level (the latter only where applicable and available to the home authority);
- g) In cases of branch closures, institutions to include a statement by an external auditor stating that the credit institution no longer holds deposits or other repayable funds through the branch (Annex IV), to align with existing credit institution's authorisation withdrawal practices.

Making these amendments, the technical standards will allow for more consistency in the information sharing and add clarity for both institutions and competent authorities. The changes will further align the technical standards with evolving regulation and accommodate the need signalled by competent authorities to align the information templates with current practices.

Additional information items with more material content implications: Indication on start date for planned activities

Option 2a: Annex I, Table 2 to be amended to include intended start date for each activity planned to be performed by a branch, not only for the core activities.

Option 2b: Annex I, Table 2 to include information on the intended start date for core activities only (status quo).

In the current versions of the RTS and ITS, when exercising the right of establishment and the freedom to provide services, institutions need to specify the activities they intend to carry out through the branch in the host Member State. Further, they need to indicate which of those activities constitute the core business and what the intended start dates of these core business activities are.

The intended start date in turn provides competent authorities with a more concrete view of the status and progress of an institution's plans: being able to provide an intended start date implies an institution's planning process for an activity is at a mature state. Only providing information on this for the core activities, potentially leaves out a substantial and valuable piece of information. Access to the intended start date of each activity for which the notification is submitted, rather than just for the core business, would allow competent authorities a more accurate and complete picture of institutions' planned activities and it is considered a very relevant piece of information to allow competent authorities to perform an accurate assessment of the notification.

Hence, it has been assessed as the preferred Option to extend the information on the intended start date to each planned activity, instead of limiting this to only to the core activities. **Option 2a has been chosen as the preferred option.**

Additional information items with more material content implications: underlying assumptions to be shared

Option 3a: As part of 'other information' in Annex I, institutions to provide additional information on the underlying assumptions behind their B/S and P&L forecasts.

Option 3b: Keep Annex I, the 'other information' section unchanged.

The section 'other information' as part of Annex I in the current version of the ITS requires institutions to submit a financial plan containing forecasts for the balance sheet and the profit and loss account, covering a period of three years. In order for competent authorities to fully assess the credibility of the plan and concluding from this, the prospect of the intended opening of the branch, access to more detail on the financial plans is crucial. Full and complete validation of an institution's plan can only be performed if more granular data is available to the competent authority, including the underlying assumptions.

Therefore, Option 3a has been chosen as the preferred option and it is proposed that institutions should submit more detailed information as part of Annex I, 'other information'. Whilst again this will lead to some additional costs to institutions and competent authorities in terms of the provision and assessment of information, this is clearly compensated for by the benefits of competent authorities' improved understanding and ability to make informed judgements.

D. Conclusions

It can be argued that some of the changes, in particular those considered under Options 2 and 3, somewhat increase the reporting burden on institutions. Nevertheless, it has been assessed that the changes would greatly improve the assessment process and its quality, enhancing dialogue and competent authorities' ability to perform their assessment during the notification process, thereby effectively contributing to a sounder and safer banking system in Europe.

The proposed changes further reflect and address the findings from last year's peer review report and are considered to greatly improve the process of notifications relating to the exercise of the right of establishment and the freedom to provide services.