

Recommendation of the European Systemic Risk Board of 26 September 2019 on exchange and collection of information for macroprudential purposes on branches of credit institutions having their head office in another Member State or in a third country

(ESRB/2019/18)

European Systemic Risk Board (ESRB) Recommendation 2019/18 was published in the Official Journal of the European Union on 9 December 2019 and was accompanied by a background report entitled “[Macroprudential policy implications of foreign branches relevant for financial stability](#)”, which can be found on the ESRB website.

This Recommendation is aimed at promoting and facilitating access to certain supervisory information on branches of credit institutions for macroprudential authorities, by means of voluntary arrangements for cooperation and a mechanism for reasoned requests. The ESRB considers that some branches may be relevant for financial stability in the Member State in which they operate.

The Recommendation was issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010 and is addressed to a group of institutions comprising the relevant authorities (which are defined in the Recommendation itself and include the Banco de España) for sub-recommendation A, the European Commission for sub-recommendation B and the European Banking Authority for sub-recommendation C.

The Banco de España, as the competent authority for the supervision of less significant institutions in Spain and a designated authority (pursuant to Directive 2013/36/EU, Regulation (EU) No 575/2013 and Regulation (EU) No 1024/2013), adopted this Recommendation by means of an Executive Committee resolution on 19 June 2020, to be governed by it with regard to the possible exchange and collection of information on branches of credit institutions for macroprudential purposes, pursuant to the provisions of sub-recommendation A.

I

(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 26 September 2019

on exchange and collection of information for macroprudential purposes on branches of credit institutions having their head office in another Member State or in a third country

(ESRB/2019/18)

(2019/C 412/01)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

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

Having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board ⁽¹⁾, and in particular Article 3(2)(b), (d) and (f) and Articles 16 to 18 thereof,

Having regard to Decision ESRB/2011/1 of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board ⁽²⁾, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) The ultimate objective of macroprudential policy is to contribute to the safeguarding of the stability of the financial system as a whole, including by strengthening its resilience and decreasing the build-up of systemic risks.
- (2) Regulation (EU) No 1092/2010 acknowledges that the monitoring and assessment of potential systemic risks should be based on a broad set of relevant macroeconomic and micro-financial data and indicators and grants the European Systemic Risk Board (ESRB) access to all of the information necessary to perform its duties regarding macroprudential oversight, while preserving the confidentiality of that information as required.
- (3) Other authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks — including authorities which provide supporting analysis for macroprudential policy decisions — should also have access to the relevant set of data and indicators needed to perform their tasks. The information available to relevant authorities on branches in their territories differs across Member States in terms of scope and frequencies.

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ C 58, 24.2.2011, p. 4.

- (4) Recommendation ESRB/2011/3 of the European Systemic Risk Board ⁽³⁾ recommended, among other things, that Member States ensure that macroprudential authorities have the power to require and obtain in a timely fashion all national data and information relevant for the exercise of their tasks, including information from microprudential and securities market supervisors and information from outside the regulatory perimeter, as well as institution-specific information upon reasoned request and with adequate arrangements to ensure confidentiality. However, that Recommendation could not anticipate the various institutional arrangements relating to the setting and conduct of macroprudential policy that have evolved in the Member States since 2011. Therefore, it did not specifically address certain institutional arrangements that may be needed to ensure that macroprudential authorities have access to information that is considered to be necessary for the performance of their tasks, but that is not available to them.
- (5) Currently, the provision of cross-border financial services via branches of credit institutions having their head office in another Member State or in a third country represents an important part of the financial system in a number of Member States. In these Member States, certain branches (a) have been designated by competent authorities as significant in accordance with Article 51 of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁴⁾; (b) meet the criteria of other systemically important institutions according to Article 131 of Directive 2013/36/EU; (c) provide critical functions on the basis of the European recovery and resolution framework; or (d) have a substantial market share in activities that are relevant from the financial stability perspective (together hereinafter referred to as 'branches relevant for financial stability'). Union law does not provide a harmonised definition of branches relevant for financial stability. The provision of cross-border financial services via such branches is expected to increase in the future as financial integration within the European Union continues. Any authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks needs to be able to obtain certain basic information on all branches operating within its jurisdiction whose parent credit institutions have their head office in another Member State or in a third country. This is so that the authority can, as a minimum, assess whether these branches are relevant for financial stability in the country in which they operate. If the authority considers that is the case, it also needs to be able to obtain more detailed information on the activities of those branches.
- (6) Branches of credit institutions having their head office in another Member State or in a third country vary in size and importance. Where those branches are considered as relevant for financial stability in the country in which they operate there is a need to intensify the collaboration between the relevant authorities of the host and home Member States. In such cases, the exchange of selected information on parent institutions and the groups of which these branches form part is necessary to assess the potential amplifying impact that such branches might have during periods of excessive credit growth or in a crisis. The exchange of such selected information on those parent institutions and groups relating to own funds and leverage (including relevant buffer requirements), funding and liquidity risk, business strategy, and certain aspects of recovery plans is also necessary to ensure the effectiveness of macroprudential policy in the host Member States of such branches.
- (7) For these reasons, the provision of the set of information indicated in Recommendation C is considered necessary so that authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks are able to fulfil their mandates. Such information should be provided to those authorities upon a reasoned request, on a need-to-know basis, and within the limits of applicable Union and national law. Where those authorities need to obtain additional information in order to carry out their tasks and monitor or assess systemic risks or for purposes of developing new policy instruments, they should be provided with that additional information upon a reasoned request.
- (8) Neither Directive 2013/36/EU, in particular Article 56 thereof, nor Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁵⁾ preclude or create obstacles to the exchange of information between competent authorities and authorities or bodies charged with the responsibility for maintaining the stability of the financial system in Member States, in the discharge of their supervisory functions. Although Union law provides a framework for the exchange of information between relevant authorities for microprudential purposes, no framework exists for the exchange of information for macroprudential purposes.

⁽³⁾ Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1).

⁽⁴⁾ 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 Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁵⁾ 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).

- (9) Central banks collect information on branches of credit institutions having their head office in another Member State or in a third country. National central banks within the European System of Central Banks are encouraged to share such information with relevant authorities upon a reasoned request and on a need-to-know basis, as this is considered to be an effective way to facilitate the exercise of their tasks.
- (10) Well-designed arrangements governing the exchange of information on branches of credit institutions having their head office in another Member State or in a third country could assist authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks in carrying out their tasks. The use of memoranda of understanding would introduce standardisation and predictability, and create common ground as to what constitutes relevant information for the exercise of their tasks; memoranda of understanding are also considered to be an effective and efficient means of achieving the objective of establishing a culture of information sharing between the relevant authorities for macroprudential purposes. In this regard, the Nordic-Baltic Macroprudential Forum ⁽⁶⁾ and the most recent Memorandum of Understanding on Cooperation and Coordination on cross-border financial stability in the Nordic-Baltic region ⁽⁷⁾ could serve as reference points for a framework for close cooperation between the relevant authorities.
- (11) According to the principle of subsidiarity, the choice of relevant authority to collect information for financial stability or macroprudential purposes should be made by the relevant Member State.
- (12) Under Article 40 of Directive 2013/36/EU, competent authorities of the host Member States may require that all credit institutions having branches within their territories report to them periodically on their activities in those host Member States. This reporting may be required (i) for information and statistical purposes; (ii) for identifying branches as significant or (iii) for supervisory purposes entrusted to the host competent authority under Directive 2013/36/EU. It is not clear whether information collected under that Article can also be used for macroprudential purposes, as the relevant provision does not distinguish between microprudential and macroprudential supervision. Therefore, the European Commission should consider, within the review provided for in Article 513 of Regulation (EU) No 575/2013, whether Union law should be revised, namely to clarify that information from branches can also be collected for macroprudential purposes.
- (13) Branches of credit institutions having their head office in a third country are only subject to national law, and national laws in this matter are not harmonised by Union law. Following recent amendments to it by Directive (EU) 2019/878 of the European Parliament and of the Council ⁽⁸⁾, Article 47 of Directive 2013/36/EU specifies that a minimum set of information complemented by any other information considered necessary to enable comprehensive monitoring of the activities of the branch is to be collected by national competent authorities from branches of credit institutions having their head office in a third country. Such information should be shared with the authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks, where possible and appropriate. Within its review as provided for in Article 513 of Regulation (EU) No 575/2013 — and referred to above — as to whether Union law should be revised, namely to clarify that information from branches can also be collected for macroprudential purposes, the Commission should also consider the feasibility of data collection for such purposes from branches of credit institutions having their head office in a third country.

⁽⁶⁾ The Nordic-Baltic Macroprudential Forum (NBMF) is a regional cooperation body that brings together central bank governors and heads of supervisory authorities. The NBMF regularly discusses financial stability risks in the Nordic and Baltic area and in specific countries, as well as macroprudential measures and their reciprocation as a means of addressing these risks and enhancing regional coordination.

⁽⁷⁾ Memorandum of Understanding on Cooperation and Coordination on cross-border financial stability between relevant Ministries, Central Banks, Financial Supervisory Authorities and Resolution Authorities of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden, dated 31 January 2018.

⁽⁸⁾ Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

- (14) Pursuant to Council Regulation (EU) No 1024/2013 ⁽⁹⁾ (hereinafter the 'SSM Regulation'), the ECB is the competent authority in relation to significant credit institutions in the context of the Single Supervisory Mechanism (SSM). As such, the ECB is responsible for supervising significant credit institutions and cooperates closely with the national competent authorities (NCAs) to carry out its tasks through joint supervisory teams, which comprise staff of the ECB and of the relevant national competent authorities. This allows for the smooth and prompt exchange of information relating to the supervised credit institutions. Authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks can request and obtain information from the ECB in its supervisory role on branches of credit institutions having their head office in another Member State.
- (15) Under Article 5(2) of the SSM Regulation, the ECB is responsible for assessing macroprudential measures adopted by national authorities and, when deemed necessary, for applying higher requirements for capital buffers and more stringent measures. In this regard, information on branches of credit institutions having their head office in another Member State or in a third country falls within the categories of information that may be necessary for the ECB to perform these tasks.
- (16) Competent authorities of Member States not participating in the SSM can cooperate and exchange information on supervised credit institutions in colleges of supervisors established pursuant to Articles 51 and 116 of Directive 2013/36/EU and which serve as vehicles for the coordination of supervisory tasks related to cross-border activities carried out by a credit institution.
- (17) This cross-border mechanism for sharing information is focused on the objectives of microprudential supervision. Consequently, Articles 51 and 116 of Directive 2013/36/EU and Commission Delegated Regulation (EU) 2016/98 ⁽¹⁰⁾, which sets out the general conditions for the functioning of colleges of supervisors, do not specifically envisage the participation of authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks in the relevant supervisory colleges. Nevertheless, the relevant competent authority of the home Member State is, in principle, able to invite other entities to participate in meetings of colleges of supervisors, provided that all college members agree. Certain information relating to the credit institution to which the branch belongs and which is shared in the colleges of supervisors can be relevant for macroprudential purposes. In this regard, competent authorities are encouraged to invite relevant authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks to be involved in the consideration of specific topics of macroprudential interest that are discussed in the colleges of supervisors. Explicitly including such relevant authorities in the colleges of supervisors as potential observers under Commission Delegated Regulation (EU) 2016/98 could provide greater certainty as to this role. Inviting representatives of macroprudential authorities to attend meetings of the colleges of supervisors to inform other participants about macroprudential risks or regulatory developments in macroprudential areas may also benefit discussions within the colleges of supervisors.
- (18) To ensure a consistent, efficient and effective approach to information exchange for the purposes of this Recommendation, the European Banking Authority (EBA), in cooperation with the ESRB, should develop guidelines for and monitor the exchange of information. In order to achieve a certain degree of convergence of information received from the relevant stakeholders, the EBA should establish a common framework for memoranda of understanding in cooperation with all relevant stakeholders.
- (19) This Recommendation is without prejudice to the monetary policy mandates of the central banks in the Union.
- (20) Recommendations of the ESRB are published after the addressees have been informed, and after the General Board has informed the Council of the European Union of its intention to do so and provided the Council with an opportunity to react,

⁽⁹⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁽¹⁰⁾ Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2).

HAS ADOPTED THIS RECOMMENDATION:

SECTION 1

RECOMMENDATIONS

Recommendation A — Cooperation and exchange of information on a need-to-know basis

It is recommended that the relevant authorities:

1. exchange information deemed necessary for the discharge of their tasks related to the adoption and/or activation of macroprudential policy measures or for other financial stability tasks, in an effective and efficient manner, as regards branches in a host Member State of credit institutions having their head office in another Member State or in a third country. The exchange of information should take place upon receipt of a reasoned request for information in relation to such branches — taking into account guidelines issued by the EBA in accordance with sub-recommendation C(1) — submitted by a relevant authority of the host Member State entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks. The information to be exchanged should be proportionate to the relevance of the branches to financial stability in the host Member State;
2. establish memoranda of understanding or other forms of voluntary arrangements for cooperation and exchange of information among themselves — or with a relevant authority of a third country — regarding branches in the host Member State of credit institutions having their head office in another Member State or in a third country, where considered necessary and appropriate by all parties involved to facilitate the exchange of information.

Recommendation B — Changes to the Union legal framework

It is recommended that the European Commission:

1. assess whether any impediments exist in Union legislation which prevent authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks from having or obtaining the necessary information on branches to carry out those functions or fulfil those tasks;
2. propose that Union legislation be amended to remove any such impediments, where the European Commission concludes, as a result of its assessment, that such impediments exist.

Recommendation C — Guidelines for and the monitoring of exchange of information

It is recommended that the European Banking Authority:

1. issue guidelines in accordance with Recommendation A for the exchange of information between relevant authorities regarding branches of credit institutions having their head office in another Member State, which should include a list of information to be exchanged, as a minimum, on a need-to-know basis, and within the limits of applicable Union and national laws. The list should include, as a minimum, information items from each of the following categories

at the branch level:

- (a) assets and exposures, with breakdowns;
- (b) breakdowns of assets regarding borrower-based measures;
- (c) liabilities, with breakdowns;
- (d) intra-financial sector exposures;
- (e) information necessary to identify other systemically important institutions (O-SIIs);

at the parent group/parent institution level:

- (f) own funds and leverage;
 - (g) funding and liquidity;
 - (h) relevant information on branches, such as business strategy and certain elements of recovery plans of credit institutions and supervisory assessments that are relevant;
2. monitor on a regular basis, in cooperation with the ESRB, the effectiveness and efficiency of the exchange of information between relevant authorities regarding branches of credit institutions having their head office in another Member State or in a third country.

SECTION 2

IMPLEMENTATION

1. Definitions

For the purposes of this Recommendation the following definitions apply:

- (a) 'branch' means a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;
- (b) 'credit institution' means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013;
- (c) 'branch relevant for financial stability' means a branch in a host Member State of a credit institution having its head office in another Member State or in a third country that meets any of the following criteria:
 - (i) the competent authority of the host Member State has determined that the branch is designated as being significant in accordance with Article 51 of Directive 2013/36/EU;
 - (ii) the competent or designated authority of the host Member State has determined that the branch meets the criteria referred to in Article 131(3) of Directive 2013/36/EU for the identification of other systemically important institutions (O-SIIs), in accordance with Guidelines EBA/GL/2014/10 of the European Banking Authority ⁽¹¹⁾;
 - (iii) the national resolution authority of the host Member State has determined that in the host Member State the branch provides critical functions within the meaning of point 35 of Article 2(1) of Directive 2014/59/EU of the European Parliament and of the Council ⁽¹²⁾;
 - (iv) the branch has a market share exceeding 2 % of any one or more of the categories of exposures set out in points (a) and (b) of Article 133(5) of Directive 2013/36/EU ⁽¹³⁾;
- (d) 'host Member State' means host Member State as defined in point (44) of Article 4(1) of Regulation (EU) No 575/2013;
- (e) 'home Member State' means home Member State as defined in point (43) of Article 4(1) of Regulation (EU) No 575/2013;
- (f) 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise credit institutions as part of the supervisory system in operation in the Member State concerned, and the ECB under Article 9(1) of Regulation (EU) No 1024/2013;
- (g) 'memorandum of understanding' means a voluntary arrangement setting forth how the relevant authorities intend to cooperate with one another and specifying the details of the data and information to be exchanged, in line with the applicable laws and regulations;
- (h) 'relevant authority' means:
 - 1. an authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks, such as related supporting analysis, including but not limited to:
 - (i) a designated authority pursuant to Chapter 4 of Title VII of Directive 2013/36/EU or Article 458(1) of Regulation (EU) No 575/2013;
 - (ii) the ECB under Article 9(1) of Regulation (EU) No 1024/2013;
 - (iii) a macroprudential authority with the objectives, arrangements, tasks, powers, instruments, accountability requirements and other characteristics set out in Recommendation ESRB/2011/3;
 - 2. a competent authority.

⁽¹¹⁾ Guidelines of the European Banking Authority of 16 December 2014 on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) (EBA/GL/2014/10).

⁽¹²⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽¹³⁾ As amended by Directive (EU) 2019/878.

2. Criteria for implementation

1. The following criteria apply to the implementation of this Recommendation:
 - (a) due regard should be paid to the need-to-know principle and the principle of proportionality, taking into account the objective and the content of each recommendation;
 - (b) the specific compliance criteria set out in the Annex in relation to each Recommendation should be met.
2. Addressees are requested to report to the ESRB and to the Council on the actions undertaken in response to this Recommendation, or adequately justify any inaction. The reports should as a minimum contain:
 - (a) information on the substance and timeline of the actions undertaken;
 - (b) an assessment of the functioning of the actions undertaken, having regard to the objectives of this Recommendation;
 - (c) a detailed justification of any inaction or departure from this Recommendation, including any delays.

3. Timeline for the follow-up

Addressees are requested to report to the ESRB and to the Council on the actions taken in response to this Recommendation, or adequately justify any inaction, in compliance with the following timelines:

1. Recommendation A

- (a) By 31 December 2020, the relevant authorities are requested to deliver to the ESRB and to the Council an interim report on the implementation of Recommendation A.
- (b) By 31 December 2024, the relevant authorities are requested to deliver to the ESRB and to the Council a final report on the implementation of Recommendation A, taking into account the potential changes to national and EU law and to the EBA guidelines.

2. Recommendation B

By 31 December 2022, the Commission is requested to deliver to the ESRB and to the Council a report on the implementation of Recommendation B.

3. Recommendation C

By 31 December 2023, the EBA is requested to deliver to the ESRB and to the Council a report on the implementation of Recommendation C.

4. Monitoring and assessment

1. The ESRB Secretariat will:
 - (a) assist the addressees, ensuring the coordination of reporting and the provision of relevant templates, and detailing where necessary the procedure and the timeline for the follow-up;
 - (b) verify the follow-up by the addressees, provide assistance at their request, and submit follow-up reports to the General Board via the Steering Committee.
2. The General Board will assess the actions and justifications reported by the addressees and, where appropriate, may decide that this Recommendation has not been followed and that an addressee has failed to provide adequate justification for its inaction.

Done at Frankfurt am Main, 26 September 2019.

*Head of the ESRB Secretariat,
on behalf of the General Board of the ESRB*
Francesco MAZZAFERRO

ANNEX

COMPLIANCE CRITERIA FOR THE RECOMMENDATIONS**Recommendation A — Cooperation and exchange of information on a need-to-know basis**

For Recommendation A, the following compliance criteria are specified.

Sub-recommendation A(1) — Effectiveness, efficiency and proportionality in the exchange of information

1. Relevant authorities should, following a reasoned request from an authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks, collect and exchange as a minimum the following categories of information, as applicable: the information set out in points (a) to (e) of sub-recommendation C(1) in relation to all branches, and, in addition, the information set out in points (f) to (h) of sub-recommendation C(1) in relation to branches relevant for financial stability.
2. Relevant authorities should report to the ESRB and to the EBA any issues encountered during the exchange of information.
3. Once the EBA publishes guidelines in line with sub-recommendation C(1), relevant authorities should exchange as a minimum the set of information referred to in those guidelines, following a reasoned request from an authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks.
4. The following guiding principles should be observed when exchanging information:
 - a. the exchange of information should be based on a reasoned request from an authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks in the host Member State and the requested information should be necessary for the exercise of those tasks, taking into account the need-to-know principle;
 - b. the information to be exchanged should be proportionate to the relevance of the branches for financial stability in the Member State requesting the information;
 - c. authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks should take account of available information before requesting information from other relevant authorities;
 - d. relevant authorities should provide the requested information without undue delay;
 - e. relevant authorities should, within the limits of the applicable legal framework, use their powers to collect the requested information if it is not readily available to the relevant authorities;
 - f. relevant authorities should make use of existing reporting templates whenever possible;
 - g. relevant authorities should transfer data in user-friendly formats that allow further automatic processing of the data;
 - h. relevant authorities should make arrangements to allow confidential transfer of information, if required;
 - i. the receiving authority should ensure at least the same level of confidentiality for the information as is applied by the authority providing the information.
5. Inaction by authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks in host Member States will be deemed sufficiently explained where there is evidence that there are no branches relevant for financial stability in their Member State or if the authorities declare that they have all information necessary for the carrying out of their tasks. Inaction by relevant authorities will be deemed sufficiently explained if they have not received a reasoned request for information from a relevant host Member State authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks.

Sub-recommendation A(2) — Mechanisms for cooperation and exchange of information

1. The relevant authorities should ensure that any voluntary arrangements, such as memoranda of understanding, establish, inter alia, a general principle of mutual exchange of information in line with the principles on cooperation between relevant authorities and the standards for exchange of information upon request that are set out in sub-recommendation A(1).
2. Relevant authorities will be deemed to comply with sub-recommendation A(2) where they provide evidence of such voluntary arrangements or declare that they have the power to freely exchange the information pursuant to sub-recommendation A(1) without establishing such voluntary arrangements.
3. Inaction by relevant authorities will be deemed sufficiently explained where there is evidence that there are no branches relevant for financial stability in their Member State, or if the authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks declare that they have all information necessary for the carrying out of their tasks, or that no reasoned request for information was made or received.

Recommendation B — Changes to the Union legal framework

For Recommendation B, the following compliance criteria are specified.

The European Commission should assess whether changes to Union legislation are necessary to ensure that authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks have the necessary information to fulfil their tasks, so that, as a minimum:

1. information relating to the categories listed in sub-recommendation C(1) and to be developed by the EBA can be collected on a regular basis upon a reasoned request from an authority entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks;
2. additional information can be collected based on an ad-hoc reasoned request by authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks;
3. the collection and/or exchange of information in accordance with Recommendation A, as well as of information not available to relevant authorities, is possible, in particular with regard to Articles 40, 47 and 56 of Directive 2013/36/EU, as well as Article 84 of Directive 2014/59/EU, in particular as regards the exchange of information on certain elements of recovery plans ⁽¹⁾;
4. the definition of a significant branch for the purposes of Article 51 of Directive 2013/36/EU properly accounts for financial stability considerations in the host Member State;
5. it is clear that authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks can participate in colleges of supervisors as observers with regard to Articles 51 and 116 of Directive 2013/36/EU.

The European Commission should also consider incorporating information set out in the list to be developed by the EBA under sub-recommendation C(1) into Commission Delegated Regulation (EU) 2016/98, Commission Implementing Regulation (EU) 2016/99 ⁽²⁾ and Commission Implementing Regulation (EU) No 680/2014 ⁽³⁾ to ensure that competent authorities have access to the same set of information as authorities entrusted with the adoption and/or activation of macroprudential policy measures or with other financial stability tasks.

⁽¹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽²⁾ Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to Directive 2013/36/EU of the European Parliament and of the Council (OJ L 21, 28.1.2016, p. 21).

⁽³⁾ 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).

Recommendation C — Guidelines for and the monitoring of exchange of information

For Recommendation C, the following compliance criteria are specified.

Sub-recommendation C(1) — Guidelines on exchange of information

The guidelines for the exchange of information to be issued by the EBA should include, but not be limited to:

- (a) a template memorandum of understanding that can be used by the parties involved in exchange of information and can accommodate further adjustments as deemed necessary by those parties;
- (b) additional principles for effective and efficient exchange of information;
- (c) reporting formats and templates for exchange of information;
- (d) specification of the minimum set of information set out in sub-recommendation C(1), including a list of items to be exchanged following a reasoned request for all branches, and a list of items to be exchanged following a reasoned request for branches relevant for financial stability.

Sub-recommendation C(2) — Monitoring of the effectiveness and efficiency of exchange of information

1. The EBA should, in cooperation with the ESRB, monitor the efficiency and effectiveness of the exchange of information between relevant authorities based on information provided by those authorities.
 2. Based on the information received from the relevant authorities under the compliance criteria 2 relevant to sub-recommendation A(2) and the information received from the ESRB, the EBA should report periodically, at least annually, to the ESRB on the effectiveness and efficiency of the exchange of information between relevant authorities, including the number of requests for information and response time, and on memoranda of understanding that have been concluded.
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