



CEBS' Advice on information required to be exchanged under Article 42 CRD

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1. Introduction

The Commission has requested the advice of CEBS on the following questions with the intention of increasing certainty and a shared understanding among supervisors about the information that home and host competent authorities are required to provide, or are entitled to receive, in relation to credit institutions that carry out activities in a host Member State through a branch. In particular, the Commission has requested the advice of CEBS on the following questions:

- 1) The categories of information that are covered by the requirement to exchange information under Article 42 of Directive 48/2006/EC (“the Capital Requirements Directive” or “CRD”).
- 2) Any distinction between information required by the home and by the host supervisors. Article 42 requires flows of information in both directions - from home to host supervisors, and from host to home. Therefore, CEBS should specify: (i) the information that the host should supply to the home authority for purposes of its supervisory activities, and (ii) the information that the home should supply to the host authority to enable it to carry out its particular supervisory responsibilities and powers in relation to branches.

With respect to Article 42a of the proposed Directive amending the current CRD, the Commission also requests CEBS to anticipate, to the extent possible, the changes to the CRD by the end of 2009, so as to identify the host supervisors of significant branches and to include them in the relevant colleges that have been established by that date. Similarly, CEBS is requested to give early effect as far as possible to the enhanced information requirements in proposed Article 42a.

2. Background

2.1. On-going supervision of branches

The Directive 2006/48/EC allocates responsibility for the on-going supervision of credit institutions with one or more branches between the competent authorities of the home and host Member States (as defined in Article 4 thereof). Under this framework, general responsibility for prudential supervision of a credit institution and its branches falls to the competent authority of its home State, and home State rules apply, except in those areas that are specifically allocated to the authority of the host State of a branch.

The **home** State supervisor of a credit institution is responsible for:

- internal governance arrangements, internal controls, administrative and accounting procedures (Art 22); and
- own funds, solvency, large exposure lending limits and participations in the non-banking sector (prudential supervision - Art 40);

in relation to the legal entity as a whole (including its branches in other Member States).

The competent authority of the **host** State is responsible for the supervision of the following aspects in relation to the branch and its activities within the territory of that State:

- a) Conduct of business and market transparency rules (Art. 32.7) Directive 2004/39/EC);
- b) Monetary policy (Art. 41);
- c) Liquidity, "in cooperation" with the home competent authority (Art. 41). Host supervisors are permitted to impose the same liquidity requirements on branches from other Member States as apply domestic banks. Besides, host supervisors may need to use a range of supervisory tools in relation to liquidity supervision, such as off-site analysis of the entity's financial statements or on-site verification at the branch.
- d) Statistical reporting on the activities of a branch (Art. 29). This permits host authorities to require branches to provide the same information that they require from domestic banks for statistical purposes.
- e) Non-prudential host State rules that are "adopted in the interests of the general good" (Art. 31) in areas that have not been harmonised or co-ordinated in EU legislation. In some cases, rules have been specified as such by the Court of Justice, e.g. rules relating to advertising¹ and protecting the integrity of the financial sector.²
- f) Prevention of money laundering and terrorism financing (Art. 3.2 (f) Directive 2005/60/EC)

2.2. Host powers of supervisory intervention

In addition to the responsibilities allocated under the general framework for on-going supervision, the CRD confers additional powers of intervention on the competent authority of the host Member State in specific circumstances.

Article 30 permits host State intervention in cases where a branch is in breach of the prudential rules that remain under host country control (monetary policy and liquidity). The host State supervisor can request the branch to remedy the breach. If the branch fails to do so, the host supervisor must then inform the institution's home State supervisor, which must take appropriate measures to ensure that the institution rectifies the irregularity. If the violation continues in spite of any measures taken by the home State authority, the host supervisor is then permitted to intervene directly to prevent or punish further violations.

Article 31 confirms the power of host Member States to take appropriate measures to prevent or punish the breach by a branch of host country rules that have been adopted "in the interests of the general good". These national rules belong to areas that have not been harmonised or coordinated in any EU-legislation – in effect this will exclude most areas of prudential regulation. They are determined by the Court of Justice in its jurisprudence **Error! Bookmark not defined.**³

¹ 'Mediawet' case (C – 148/91). ¹ 'Alpine Investments' case (C – 384/93). Article 37 also expressly recognises that branches must comply with host State rules governing the content and form of advertising that are adopted for the general good.

Article 33 permits the host Member State, in the event of an 'emergency'– for instances in which the branch does not comply with the host country's prudential rules that still remain under host country control -, to take "any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided" by the branch, without having to follow the procedure laid down in Article 30. The host State is not required to inform the home State authorities before acting, although it must inform the Commission and the competent authorities of the Member States concerned at the earliest opportunity.

Lastly, Article 34 permits host States generally to take appropriate measures to prevent or punish irregularities committed within their territories.

2.3. Article 42: Co-operation and information

Article 42 requires the home and host supervisory authorities to co-operate closely in the supervision of the activities of a bank and its branches, and to exchange all the information that is necessary for effective supervision:

“The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.”

The information exchanged according to Article 42 is intended to ensure that home and host supervisors have all the information necessary to enable them to perform their supervisory responsibilities, including the exercise of their powers of intervention in a timely and effective manner. Therefore, Article 42 requires the flow of information in both directions: from home to host supervisor, and from host to home.

2.4. Proposed Article 42a: Significant branches

1. The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 129(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution to be considered as significant.

The request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch of a credit institution in terms of deposit exceeds 2% in the host Member State;

(b) the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State;

(c) the size and the importance of the branch in terms of number of clients within the context of banking or financial system of the host Member State.

The competent authorities of the home and the host Member State, and the consolidating supervisor where Article 129(1) applies, shall do everything within their power to reach a joint decision on the designation of branches as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking its decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

The decisions referred to in the third and fourth subparagraph shall be set out in a document containing the fully reasoned decision, transmitted to the competent authorities concerned, recognised as determinative and applied by the competent authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

2. The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 132(1)(c) and (d) and carry out the tasks referred to in Article 129(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 130(1), it shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 49 and in Article 50.

3. Where Article 131a does not apply, the competent authorities supervising a credit institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under Article 42 and paragraph 2 of this Article. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Articles 40(3) and the obligations in 42a(2).

The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out."

Article 42a will enhance the co-operative framework between home and host regulators in respect of 'significant' branches. Paragraph (2) of that new Article will require home State supervisors to provide the host supervisors of significant branches with information concerning any adverse developments in the credit institution concerned or in other members of the consolidated group, and major sanctions and exceptional measures taken in relation to that institution. The proposed amendments will also require the participation of supervisors of significant branches in meetings of the supervisory colleges for the relevant institution.

Taking into account the provisions of the proposed Article 42a, CEBS understands that information exchanges between home and host supervisors will be decisively influenced by the significance of the supervised branch. Therefore, when a branch is deemed significant, the information needed for its prudential supervision is likely to be more extensive than if the branch is not deemed significant, given the systemic relevance of the former. Moreover, when the branch is significant, the proposed Article 42a provides a primary forum for the exchange of information provided for in Article 42, the colleges of supervisors, in which host supervisors of significant branches may participate.

3. Methodology

In order to comply with the Commission's request for advice, a questionnaire has been circulated among CEBS' Members and Observers. 27 replies were received.

The questionnaire was divided in two main parts:

The first part, named "Scope and process" contained a set of five questions aimed at:

- identifying the current number of host supervisors of significant branches according to the criteria for assessing significance set out in the proposed Article 42a; and
- gathering supervisors' views regarding colleges as a primary forum for exchanges of information in the case of significant branches, with the view to anticipating the application of Article 42a.

The second part, named "Content: info to be exchanged" is aimed at collating a list of information items, grouped into information categories, that supervisors may need to provide to, or be provided with, by other supervisors in order to facilitate their monitoring of credit institutions. Host supervisors of branches were invited to mark the information items that the home supervisors may need to give them. In the same manner, home supervisors were invited to mark the information items that host supervisors may need to provide to them. Therefore, the information items to be provided to host supervisors by home supervisors have been assessed by host supervisors and, accordingly, information items to be provided to home supervisors by host supervisors have been assessed by home supervisors. As for information

exchanges regarding liquidity, the information items have been collected using the work already under way at CEBS.

In addition, participants were invited to list additional items should they think the list provided was incomplete.

4. Advice

4.1. Categories of information covered by the requirement to exchange information under Article 42

Following the Commission's request to compile an indicative list of information that is likely to facilitate the monitoring, by home and host authorities, of credit institutions that operate in other Member States through a branch or branches, and taking into account that the information categories to be exchanged under Article 42 may be more extensive in the case of significant branches, CEBS has elaborated four sets of items that can be exchanged under Article 42 CRD:

1. Information that home supervisors may need to provide to the host supervisor of significant branches.
2. Information that home supervisors may need to provide to the host supervisor of non-significant branches.
3. Information that host supervisors of significant branches may need to provide to the home supervisors.
4. Information that host supervisors of non-significant branches may need to provide to the home.

The various sets of information have been drawn up on the basis of the information items which a majority of CEBS members would need to receive from the other supervisor depending on the type of supervisor they are. For each of the information categories an explanation, as well as an example of information items under that information category, will be provided.

When reading the content of this advice, one should be aware that, except where expressly mandated by legislation, the type of information that may need to be exchanged in order to have effective supervision is dependent on the specifics of the entity under supervision, such as its structure and its particular circumstances. On the other hand, there is a need for harmonization and for reducing the burden on the banking group by duplication of requests. A college structure, with effective arrangements regarding information exchanges, could facilitate access to the information needed in order to carry out effective supervision.

CEBS would like to underline the indicative nature of the lists mentioned in this document. The type of information that home and host country authorities may need to exchange in order to have an effective and high standard supervision is highly dependent on the particular situation the entity may be going through.

Exchanges of information under Article 42, when exercised sensibly, can enhance the supervisory duties of each type of supervisor and, at the same time, reduce the supervisory burden on credit institutions. However, in order to avoid burdensome processes for supervisors, information requests should avoid requesting information items that are publicly available. With the same view, agreement between supervisors on the depth or format of the information to be exchanged, as well as the frequency of exchanges should also be sought. Finally, information exchanges when the requested item is not available to the supervisor due to the lack of supervisory powers on that topic, cannot be reasonably expected.

4.1.1. Information flows from home supervisors to host supervisors

a) Significant branches:

Information that home supervisors may need to provide to the host supervisors of significant branches

Structure and activities of the group or entity

CEBS considers that this information may be provided to the host supervisors of significant branches by the home supervisors when this information is not publicly available. A horizontal view of the structure and strategy of the institution is likely to facilitate a better understanding of its risk profile, which is of interest for the protection of local stakeholders.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 1

Information category	Information item
Structure and activities	Cross-border structure of the institution/group (if not available from public sources)
	Key business lines (if not available from public sources)
	Legal structure (if not available from public sources)
	Significant capital links between entities (if not available from public sources)
	Qualifying holdings held by the parent company when deemed significant by the home supervisor (if not available from public sources)
	Location of significant business units (if not available from public sources)
	Significant changes in the group/entity structure, including all major institutions (including investment firms) in the group
	Business strategy
	Changes in business strategy

	Description of policy for intra-group funding
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Management and ownership

The management and ownership of a credit institution have a clear influence on its risk profile and soundness. Therefore, CEBS believes that changes in the management structure of the institution should be communicated to host supervisors of significant branches under Article 42.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 2

Information category	Information item
Management/ Ownership	Updated organisation charts of the group/entity (if not publicly available)
	Management structure (if not publicly available)
	Changes in organisation or senior management that have a significant impact on internal controls, culture or risk management
	Changes in major shareholders

Internal control mechanisms

Information regarding the internal control mechanisms applied at the central level can facilitate understanding the institution, especially information regarding their deficiencies or the concerns that home supervisors may have with respect to them. In addition, host supervisors are responsible for the supervision of some risks (i.e. liquidity risk), so CEBS considers that information regarding governance and internal control, specially of those items related to liquidity, should be communicated to host supervisors of significant branches under Article 42.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 3

Information category	Information item
Internal	Governance agreements

control mechanisms	Organisational structure: lines of responsibility
	Processes to identify, manage, monitor and report risks
	Administrative and accounting procedures

Significance of the branch

Host supervisors are best placed to provide information regarding the criteria for assessing the significance of branches set out in proposed Article 42a.

Solvency/capital adequacy

CEBS believes that host supervisors of significant branches can benefit from information on capital and capital requirements provided by the home supervisor (when it is not publicly available), in order to help the host supervisors be aware of solvency issues in the institution that could eventually impact the branches.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 4

Information category	Information item
Solvency / Capital adequacy	Total capital (when not publicly available or when increased frequency of information is needed)
	Total tier 1 capital (when not publicly available or when increased frequency of information is needed)
	Total tier 2 capital (when not publicly available or when increased frequency of information is needed)
	Pillar 1 capital requirements: credit risk (when not publicly available or when increased frequency of information is needed)
	Pillar 1 capital requirements: counterparty risk (when not publicly available or when increased frequency of information is needed)
	Pillar 1 capital requirements: market risk (when not publicly available or when increased frequency of information is needed)
	Pillar 1 capital requirements: operational risk (when not publicly available or when increased frequency of information is needed)
	Pillar 2 capital requirements: credit institution's assessment of the adequacy of internal capital (ICAAP)
	Pillar 2 capital requirements: possible capital add-ons within the SREP
	Significant changes in Tier 1 ratio and total capital ratio

Liquidity

CEBS believes that in the context of domestic-based liquidity regimes within the European Union, exchanges of information between supervisors of cross-border groups and cross-border credit institutions are essential to enable a common understanding of these institutions' potential vulnerabilities.

The exchanges of information under Article 42 should enable the home supervisor and the host supervisors of branches in other Member States to reach a common understanding of the liquidity risk and resilience of a given institution, in the short and long term, given the specificities of the group's business and the corresponding risk tolerance.

Liquidity vulnerabilities may be reinforced by the inadequacy of the level of capital. Similarly, information on the terms and conditions for benefiting from local deposit guarantee schemes or central bank refinancing would be relevant, as well as information on the main business lines. All of these topics are covered in other sections of the questionnaire. As precise ratios or indicators would highly dependent on the business model of a credit institution, only types of information useful to all supervisors, irrespective of the main activities of the supervised entities, are considered in this advice.

The scope of the proposed information covers both qualitative and quantitative information. Qualitative information should highlight the degree of interdependence in terms of possible centralised liquidity management and liquidity risk policies, including allocation of liquidity support within the entities in times of stress. Quantitative information should provide insight into resilience in the short-term (for example, as indicated by a liquidity buffer) as well as in the longer term, and on developments in the balance sheet structure.

The table below shows an indicative list of items that the home supervisor may need to provide the host supervisor of a significant branch.

Table 5

Information category	Information item
Liquidity	Home supervisor's overall opinion on the liquidity risk profile and liquidity positions
	Liquidity strategy & scope of application, including if applicable in terms of <ul style="list-style-type: none"> - centralised management of liquidity (cash pooling); - liquidity support to foreign branches in business in normal situations; - stress test scenarios; - liquidity buffer; and - contingency funding plan
	Liquidity policy & scope of application
	Obstacles to cash and collateral transfers to foreign branches
	Quantitative information on the balance sheet structure, including:

	<ul style="list-style-type: none"> - an indicator/metric on maturity transformation (e.g. a maturity ladder); - a long-term funding ratio; and - indicators/metrics on the diversification of the funding structure (e.g. assessing the degree of reliance on wholesale and retail funding, measuring the funding counterparty concentration...)
	<p>Quantitative information on the short-term resilience of the head office</p> <ul style="list-style-type: none"> - a measure of unencumbered highly liquid assets (e.g. a liquidity buffer enabling the bank to weather a liquidity shock up to one month without requiring adjustments to the business model)
	Domestic liquidity ratio and significant changes, if any
	Market information related indicators (such as the evolution of share prices, CDS spreads...)

Supervisory Review and Evaluation Process

CEBS believes that the assessments made by the home supervisor are a very valuable input to the host supervisor because they facilitate the understanding of the risk profile of the institution. Shared information on the SREP is likely to facilitate co-ordination of supervisory activities.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 6

Information category	Information item
SREP	Information on risk assessment
	Planning of supervisory activities
	Follow-up action

Major sanctions and exceptional measures

Article 42a will require home supervisors to inform host supervisors of significant branches of major sanctions and exceptional measures taken on the credit institution.

College meetings

According to Article 42a, host supervisors of significant branches are part of the colleges of supervisors. Therefore, they need to be informed on a timely basis by the home supervisor about topics relevant to college meetings. The exchange of information taking place within the college of supervisors has to involve host supervisors of significant branches whenever necessary.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 7

Information category	Information item
College meetings	Organisation of college meetings, issues to be discussed and activities to be considered
	Actions taken or measures carried out in college meetings

Exposures

CEBS considers that this information can be provided to host supervisors of significant branches by the home supervisors because it is likely to facilitate their monitoring of liquidity. Also, knowledge about the levels of exposures in the institution as a whole can help assessing potential effects in the branch.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 8

Information category	Information item
Exposures	Secured exposures to other banks (e.g. covered bonds)
	Unsecured exposures to other banks
	Concentration in interbank exposures
	Asset quality and concentrations by type of portfolio

Supervisory framework

CEBS understands that this information can enhance supervisory co-ordination and would also facilitate co-operation in times of crisis. Therefore, home supervisors of significant branches should provide host supervisors with this information.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 9

Information category	Information item
Supervisory framework	List of competent authorities involved in the supervision of the institution and any changes
	MoUs in place with other authorities
	Supervisory powers with regard to restrictions
	Supervisory powers with regard to transfer of capital
	Supervisory powers with regard to administration
	Supervisory powers with regard to insolvency

Deposit Guarantee Schemes

Information regarding DGS in the home Member State is very important for consumer protection and awareness in the host Member State. Therefore, this information falls into the scope of Article 42.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 10

Information category	Information item
Deposit Guarantee Schemes	Level of coverage of the Deposit Guarantee Fund
	Scope of coverage (depositors and products excluded from the guarantee)
	Funding mechanism: ex-ante or ex-post coverage
	Maximum allowable amount of the DGS

Emergency situations

CEBS believes that timely exchange of information, before and during an emergency situation, together with a good co-operation among supervisors is very important to address crisis management in an effective manner, as well as from a financial stability perspective.

Knowing beforehand the list of authorities to contact and the co-operation procedures in place will decisively facilitate information exchanges in emergency situations.

Also, when the proposed Article 42a comes into force, home supervisors will need to inform host supervisors of significant branches of adverse developments in credit institutions or any other institutions in the group, which could seriously affect the credit institutions.

The table below shows a list of items that could be comprised within this category of information.

Table 11

Information category	Information item
Emergency situations	Adverse developments within intra-group transactions (high risk of contagion or excessive reliance on intra-group transactions)
	Adverse developments in the financial position of the institution (declining capital ratios, losses, loss of liquidity, increase in funding costs)
	Adverse development e.g. major fraud
	Emergency situation that arises at the branch/entity/group which potentially jeopardises safety and soundness
	Emergency situation that arises at the branch/entity/group which potentially jeopardises the financial stability of the Host Member State
	Impact analysis on general business: total exposure to clients, provisions, allowances and write-offs needed
	Impact analysis on general business: effect of provision/loss on capital adequacy
	Systemic assessment results
	Contingency plans
	Persons to be contacted in emergencies, including out-of-office contact details
	Information on co-operation procedures with other relevant Authorities
	Measures to be taken in response to the situation

b) Non significant branches:

Information that home supervisors may need to provide to host supervisors of non-significant branches

Structure and activities of the group or entity

CEBS considers that some information may be needed by the the host supervisors of branches when this information is not publicly available. A horizontal view of the structure and strategy of the institution is likely to facilitate a better understanding of its risk profile, which is of interest for the protection of local stakeholders.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 12

Information category	Information item
Structure and activities	Cross-border structure of the institution/group (if not available from public sources)
	Key business lines (if not available from public sources)
	Legal structure (if not available from public sources)
	Location of significant business units (if not available from public sources)
	Significant changes in the group/entity structure, including all major institutions (including investment firms) in the group
	Business strategy
	Changes in business strategy
	Description of policy for intra-group funding

Management and ownership, internal control mechanisms, SREP, college meetings and exposures

CEBS considers that, taking the proportionality principle into consideration and because of the limited relevance of the information for host supervisors, detailed information on these topics is not likely to be needed by host supervisors of non-significant branches under Article 42.

Significance of the branch

Host supervisors are best placed to provide information regarding the criteria for assessing the significance of branches set out in proposed Article 42a.

Solvency/capital adequacy

CEBS considers that, with the proportionality principle in mind, in principle only high level information on capital may need to be exchanged under Article 42.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 13

Information category	Information item
Solvency / Capital adequacy	Total capital (when not publicly available or when increased frequency of information is needed)
	Significant changes in Tier 1 ratio and total capital ratio

Liquidity

CEBS believes that in the context of domestic-based liquidity regimes within the European Union, exchanges of information between supervisors of cross-border groups and cross-border credit institutions are essential to enable a common understanding of these institutions' potential vulnerabilities.

The exchanges of information under Article 42 should enable the home supervisor and the host supervisors of branches in another Member State to get a common understanding of the liquidity risk and resilience of a given institution, in the short and long-term, given the specificities of the group's business and the corresponding risk tolerance.

CEBS believes that, when a branch is deemed non-significant in the sense of Article 42a, mainly qualitative information should be regarded as relevant. This qualitative information should highlight the degree of the interdependencies in terms of possible centralised liquidity management and liquidity risk policies, including in terms of allocation of liquidity support within the entities in times of stress

The table below shows an indicative list of items that the home supervisor may need to provide to the host supervisor of a non-significant branch.

Table 14

Information category	Information item
Liquidity	Supervisor's overall opinion on the liquidity risk profile and liquidity positions of the head office (including compliance with local regulations)
	Liquidity strategy of the head office with regard to liquidity support of foreign branches both in business as usual situations and times of crisis

Major sanctions and exceptional measures

CEBS considers that home supervisors should inform host supervisors of non-significant branches of major sanctions and exceptional measures taken on the credit institution for several reasons, mainly because the issues could also be present in the branch and to allow host supervisors to assess how the branch may be impacted by the situation.

Supervisory framework

CEBS considers that, taking the proportionality principle into consideration, in principle only information regarding supervisory powers with regards to administration and insolvency may need to be exchanged with host supervisors of non-significant branches under Article 42. Information regarding these topics is likely to facilitate cooperation during crisis times.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 15

Information category	Information item
	Supervisory powers with regard to administration
	Supervisory powers with regard to insolvency

Deposit Guarantee Schemes

Information regarding DGS in the home Member State is very important for consumer protection and awareness in the host Member State. Therefore, this information falls within the scope of Article 42.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 16

Information category	Information item
Deposit Guarantee Schemes	Level of coverage of the Deposit Guarantee Fund
	Scope of coverage (depositors and products excluded from the guarantee)
	Funding mechanism: ex-ante or ex-post coverage
	Maximum allowable amount of the DGS

Emergency situations

CEBS believes that timely exchange of information, before and during an emergency situation, together with a good co-operation among supervisors, is very important to address crisis management in an effective manner, as well as from a financial stability perspective. However, in the case of non-significant branches, items such as impact analyses, systemic assessments or contingency plans are not likely to enhance the monitoring of the institution.

Knowing beforehand the list of authorities to contact and the co-operation procedures in place will decisively facilitate information exchanges in emergency situations.

The table below shows a list of items that could be comprised within this category of information.

Table 17

Information category	Information item
Emergency situations	Adverse developments within intra-group transactions (high risk of contagion or excessive reliance on intra-group transactions)
	Adverse developments in the financial position of the institution (declining capital ratios, losses, loss of liquidity, increase in funding costs)
	Adverse development e.g. major fraud
	Emergency situation that arises at the branch/entity/group which potentially jeopardises safety and soundness
	Emergency situation that arises at the branch/entity/group which potentially jeopardises the financial stability of the host Member State
	Persons to be contacted in emergencies, including out-of-office contact details
	Information on co-operation procedures with other relevant Authorities
	Measures to be taken in response to the situation

4.1.2. Information flows from host supervisors to home supervisors

a) Significant branches:

Information that host supervisors of significant branches may need to provide to the home supervisor

Management

CEBS believes that home supervisors do not need this information to be provided by host supervisors of significant branches, unless there are items about the management structure

which are specific to the branch. In that case, those pieces of information, together with changes in the organisation or management in the branch that could have an impact on the institution, could be useful to home supervisors for better understanding the local organisation and, thus, for the assessment of the organisational structure of the group as a whole. Although changes in the organisation or management in the branch would be communicated by the bank to both home and host supervisors, if these changes are likely to have an impact in the institution, home supervisors may wish to contact host supervisors and double check the information provided by the credit institution. However, this exchange of views does not intend to change the fact that the responsibility of the supervision of the governance of the complete institution pertains to the home supervisor.

Table 18

Information category	Information item
Management	Management structure (if not publicly available)
	Changes in organisation or senior management that have a significant impact on internal controls, culture or risk management

Internal control mechanisms

While acknowledging that the supervision of the internal control mechanisms belongs to home supervisors and without the intention of imposing supervisory duties in relation to internal control to host authorities, CEBS considers that home supervisors could require this information from the host supervisors of significant branches when those branches have developed internal control mechanisms in areas which fall under the responsibility of the host supervisor. That is to say, when internal control items are specific to the branch instead of being carried out at the centre, and host supervisors have access to that information in the exercise of the supervisory duties that are of their competence, home supervisors are likely to need this information in order to assess the adequacy of these systems and check their compliance with the principles applicable at the centre.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 19

Information category	Information item
Internal control mechanisms in the branch	Governance agreements
	Organisational structure: lines of responsibility
	Processes to identify, manage, monitor and report risks

Significance of the branch

When the proposed Article 42a comes into force, host supervisors should provide home supervisors with information regarding the criteria for assessing the significance of the branch according to Article 42a. This information is important in order to assess the systemic relevance of the branch and necessary for the inclusion of the branch in the college of supervisors. Host supervisors, which are ultimately responsible for assessing the significance of the branch in question, are better placed to collect that information.

The table below displays the list of criteria for assessing the branch according to proposed Article 42a.

Table 20

Information category	Information item
Significance of the branch	Market share of the branch in terms of deposits
	Likely impact of a suspension or closure of the operations of the credit institution on the payment and clearing and settlement systems in the host Member State
	Size and importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State

Liquidity

The scope of the proposed information items covers both qualitative and quantitative information. Qualitative information should highlight the degree of interdependence in terms of possible centralised liquidity management and liquidity risk policies, including in terms of the allocation of liquidity support within the entities in stress times. Quantitative information should provide insight on resilience in the short-term (for example, as indicated by a liquidity buffer), and in the longer term, and on developments in the balance sheet structure.

The table below shows an indicative list of items that the host supervisor of a significant branch may need to provide the home supervisor.

Table 21

Information category	Information item
Liquidity of the branch	Host Supervisor's overall opinion on the liquidity risk profile and liquidity positions of the branch
	Qualitative information on the funding capacities/independence of the branch (e.g. role in the money market, securities/derivatives markets, currency centre, clearing and settlement...)

	<p>Strategy for stressed times, including if applicable information on local</p> <ul style="list-style-type: none"> - stress test scenarios; - liquidity buffer; and - contingency funding plan
	<p>Obstacles to cash and collateral transfers to the head office set out in the local liquidity policy (i.e. other than legal/regulatory provisions)</p>
	<p>Quantitative information on the balance sheet structure, including:</p> <ul style="list-style-type: none"> - an indicator/metric on maturity transformation (e.g. a maturity ladder); - a long-term funding ratio; and - indicators/metrics on the diversification of the funding structure (e.g. assessing the degree of reliance on wholesale and retail funding, measuring the funding counterparty concentration...)
	<p>Quantitative information on the short term resilience of the branch</p> <ul style="list-style-type: none"> - a measure of unencumbered highly liquid assets (e.g. a liquidity buffer enabling the bank to weather a liquidity shock for up to one month without requiring adjustments to the business model)
	<p>Local liquidity ratio and significant changes, if any</p>

Major sanctions and exceptional measures

CEBS considers that home supervisors will benefit if host supervisors of significant branches inform them of major sanctions and exceptional measures taken against the branch, for purposes such as assessing the ability of the bank to control its branches abroad, having a complete view of the compliance of the bank and assessing potential impacts on the risk profile of the institution as well as risks posed to financial stability.

College meetings

Home supervisors are in charge of chairing the meetings of colleges of supervisors and deciding on their organisation. Nevertheless, for adequate planning of such meetings, input from host supervisors of significant branches is valuable when there is reason for them to participate in the meetings or activities of the college.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 22

Information category	Information item
College meetings	Input for college meetings
	Actions taken or measures carried out

Exposures

CEBS considers that this information, if host supervisors can have access to it in the exercise of their respective supervisory competences, could be useful to enhance the monitoring of the operations and the prudential supervision of solvency and large exposures to be carried out by the home supervisor.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 23

Information category	Information item
Exposures of the branch	Secured exposures to other banks (e.g. covered bonds)
	Unsecured exposures to other banks
	Concentration in interbank exposures
	Asset quality and concentrations by type of portfolio

Supervisory framework

CEBS understands that this information can enhance supervisory co-ordination and would also facilitate co-operation in times of crisis. Home supervisors will benefit if host supervisors of significant branches inform them about their powers, since understanding the powers of host supervisors can be key for planning and co-ordination of supervisory activities, especially in emergency situations.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 24

Information category	Information item
Supervisory framework	List of competent authorities involved in the supervision of the institution and its changes
	Supervisory powers with regard to restrictions
	Supervisory powers with regard to transfer of capital
	Supervisory powers with regard to administration
	Supervisory powers with regard to insolvency

Deposit Guarantee Schemes

CEBS believes that home supervisors can benefit from information regarding the host countries' Deposit Guarantee Schemes. Insight into the host country's institutional set up can be useful, especially when the institution has joined the host scheme through topping up arrangements.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 25

Information category	Information item
Deposit Guarantee Schemes	Level of coverage of the Deposit Guarantee Fund
	Scope of coverage (depositors and products excluded from the guarantee)
	Funding mechanism: ex-ante or ex-post coverage
	Maximum allowable amount of the DGS

Emergency situations

CEBS believes that timely exchange of information, in the event of an emergency situation, together with a good co-operation among supervisors is very important to address crisis management in an effective manner, as well as from a financial stability perspective.

Knowing in advance the list of authorities to contact and the co-operation procedures in place will decisively facilitate information exchanges in emergency situations.

The table below shows a list of items that could be comprised within this category of information.

Table 26

	Information item
Information category	Adverse developments within intra-group transactions (high risk of contagion or excessive reliance on intra-group transaction)
	Adverse developments in the financial position of the branch (e.g., losses, loss of liquidity)
	Adverse development e.g. major fraud
	Emergency situation that arises at the branch level which potentially jeopardises safety and soundness
	Emergency situation that arises at the branch level which potentially jeopardises the financial stability of the host Member State
	Impact analysis on general business: total exposure to clients, provisions, allowances and write-offs needed
	Impact analysis on general business: effect of provisions/loss on capital adequacy
	Systemic assessment results
	Contingency plans
	Persons to be contacted in emergencies, including out-of-office contact details
	Information on co-operation procedures with other relevant Authorities
	Measures to be taken in response to the situation

b) Non-significant branches:

Information that host supervisors of non-significant branches may need to provide to the home supervisors

Management and ownership of the group or entity, internal control mechanisms

CEBS believes that home supervisors of non significant branches generally would not need this information to be provided by host supervisors in a detailed manner, even if there are items of the management structure or of the internal control mechanisms which are specific to the branch. This is because the developments at non significant branches are not likely to have a great impact on the credit institution as a whole.

Significance of the branch

According to Article 42a, host supervisors should provide home supervisors with information regarding the criteria for assessing the significance of the branch. This information is important in order to assess the systemic relevance of the branch and necessary for the inclusion of the branch in the college of supervisors. Host supervisors, which are ultimately responsible for assessing the significance of the branch in question, are better placed to collect that information.

The table below displays the list of criteria for assessing the branch according to proposed article 42a.

Table 27

Information category	Information item
Significance of the branch	Market share of the branch in terms of deposits
	Likely impact of a suspension or closure of the operations of the credit institution on the payment and clearing and settlement systems in the host Member State
	Size and importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State

Liquidity

CEBS believes that, when a branch is deemed non-significant in the sense of Article 42a, mainly qualitative information should be considered to be relevant. This qualitative information aims at highlighting the degree of interdependencies in terms of possible centralised liquidity management and liquidity risk policies, including in terms of allocation of liquidity support within the entities in times of stress

The table below shows an indicative list of items that the host supervisor of a non-significant branch may need to provide to the home supervisor.

Information category	Information items
Liquidity	Supervisor's overall opinion on the liquidity risk profile and liquidity positions of the branch (including compliance with local regulations)
	Liquidity strategy of the branch (possible impact of the business plan on the liquidity position on the liability side)

Major sanctions and exceptional measures

CEBS considers that home supervisors will benefit if host supervisors of non significant branches inform them of major sanctions and exceptional measures taken against the branch, for purposes such as assessing the ability of the bank to control its branches abroad, having a complete view of the compliance of the bank and assessing potential impacts on the risk profile of the institution, as well as risks posed to financial stability.

Input for college meetings, exposures and supervisory framework.

CEBS understands that, in principle, it is not necessary for host supervisors of non-significant branches to provide home supervisors with such information because, as the branch is not significant, this additional information is not likely to enhance the monitoring of the credit institution.

Deposit Guarantee Schemes

CEBS believes that home supervisors can benefit from information regarding the host countries' Deposit Guarantee Schemes. Insight into the host country's institutional set up can be useful, especially when the institution has joined the host scheme through topping up arrangements.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 28

Information category	Information item
Deposit Guarantee Schemes	Level of coverage of the Deposit Guarantee Fund
	Scope of coverage (depositors and products excluded from the guarantee)
	Funding mechanism: ex-ante or ex-post coverage
	Maximum allowable amount of the DGS

Emergency situations

CEBS believes that timely exchange of information, in the event of an emergency situation, together with a good co-operation among supervisors is very important to address crisis management in an effective manner, as well as from a financial stability perspective. However, in the case of non-significant branches, items such as impact analyses, systemic assessments or contingency plans are not likely to enhance the monitoring of the institution.

Knowing in advance the list of authorities to contact and the co-operation procedures in place will decisively facilitate information exchanges in emergency situations.

The table below shows an indicative list of items that could be comprised within this category of information.

Table 29

	Information item
Information category	Adverse development e.g. major fraud
	Emergency situation that arises at the branch/entity/group which potentially jeopardises safety and soundness
	Emergency situation that arises at the branch/entity/group which potentially jeopardises the financial stability of the host Member State
	Persons to be contacted in emergencies, including out-of-office contact details
	Information on cooperation procedures with other relevant Authorities
	Measures to be taken in response to the situation

4.2. Anticipation of article 42a: Host supervisors of significant branches

4.2.1. Number of Member States that are hosts of significant branches

According to the responses provided to the questionnaire which was circulated, the number of Member States that are hosts to significant branches ranges between 11 and 14 depending on the criteria for the assessment of the significance of the branch. They are non cumulative and non limitative criteria, so the fulfilment of one of them, as agreed by the home and host supervisors or as assessed by the host supervisor will suffice to consider the branch as significant. Taking that into account, the number of host member states that have assessed that the branches they host fulfil at least one of the criteria for significance is 17. The banking supervisors of those host countries will need to be involved in colleges of supervisors for the credit institutions or banking groups, according to Article 42a.

Table 30

Criterion for assessing significance	Number of countries that fulfil criterion
Foreign branches of a credit institution within Member State whose market share in terms of deposits exceeds 2% in the host Member State	14
Likely significant impact of a suspension or closure of the operations of the credit institution on the payment and clearing and settlement systems in the host Member State	11
Size and the importance of the branch in	11

terms of number of clients within the context of the banking or financial system of the host Member State	
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4.2.2. Involvement of supervisors of significant branches within colleges of supervisors

CEBS believes that colleges constitute the primary forum for information exchanges between home and host supervisors of significant branches, and that the information to be exchanged would be that normally exchanged in the context of the college.

Because of the strategic role colleges of supervisors play in exchanging information in a timely and effective manner, CEBS welcomes the request of the European Commission to anticipate Article 42a with respect to the inclusion of host supervisors of significant branches in the colleges of supervisors for the relevant credit institutions.