EBA/CP/2013/10
20 May 2013

Consultation Paper

Draft Implementing Technical Standards

On joint decisions on institution-specific prudential requirements under Article 108 of the proposed Capital Requirements Directive

Consultation Paper on Draft Implementing Technical Standards on joint decisions on institution-specific prudential requirements

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1. Responding to this Consultation

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

Comments are most helpful if they:

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

Please send your comments to the EBA by email to EBA-CP-2013-10@eba.europa.eu **by 16.08.2013**, indicating the reference 'EBA/CP/2013/10' on the subject field. Please note that comments submitted after the deadline, or sent to another e-mail address will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an e-mail message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.eba.europa.eu under the heading 'Legal Notice'.

2. Executive Summary

The proposed Capital Requirements Directive mandates the European Banking Authority (EBA) to develop draft implementing technical standards on institution-specific prudential requirements in order to ensure uniform conditions of application of the joint decision process with regard to the application of Articles 72, 84, 92, 100(1)(a) and 100(a).

According to the Directive, the consolidating supervisor and competent authorities responsible for the supervision of EU subsidiaries in a Member State must do everything within their power to reach joint decisions on:

i) the application of Articles 72 and 92 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 100(1)(a) to each entity within the group of institutions and on consolidated level *(capital joint decision)*; and

ii) measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and treatment of risks as required pursuant to Article 84 and relating to the need for institution specific liquidity requirements on accordance with Article 100a *(liquidity joint decision)*.

These draft implementing technical standards specify the process to be followed by the consolidating supervisor and the relevant competent authorities in the context of reaching such joint decisions, addressing such aspects as:

- Planning of the joint decision process, which is recognised to be an essential element of a successful process for the reaching of timely joint decisions;
- Contributions to the draft group risk assessment report, which are to be communicated to the consolidating supervisor in a consistent and uniform manner, through the use of a common template which will report the results of the national supervisory review and evaluation processes;
- Discussion and finalisation of the group risk assessment report, where the contributions from relevant competent authorities must be included as annexes, providing direct evidential support to the assessment of the group and its entities;
- Contributions to, and preparation of, the draft joint decision document, where relevant competent authorities submit their proposals to the joint decision concerning the entities within their jurisdiction;
- Elaboration of the joint decision document from the consolidating supervisor in a form that ensures that the joint decision is set out in a document containing a fully reasoned joint decision;
- Discussion of, and reaching of agreement on, the joint decision document, with provisions requiring the agreement to be evidenced in writing by appropriate representatives of the competent authorities;

- Communication of joint decision to the group, with clear provisions covering communication to the parent of the group and its individual entities;
- Monitoring of the application of the joint decision, in cases where actions are expected from the institution(s) in order to comply with the outcome of the joint decision;
- Processes to be followed in the absence of any joint decision, in order to ensure that decisions taken in the absence of a joint decision are shared between the consolidating supervisor and the relevant competent authorities and communicated to the group as a single document;
- Annual and exceptional updates of joint decisions, with provisions reflecting the urgency of the update and the appropriate involvement of relevant competent authorities;

In addition, the consolidating supervisor and relevant competent authorities are required to consider the possible involvement of third country supervisors, subject to their agreement, in the process of developing and discussing the group risk assessment report given the importance of ensuring a complete assessment of the financial condition and risk profile of all entities – including non-EEA entities – of the group.

For the finalisation of this draft ITS the EBA will consider the responses to this consultation paper as well as any opinion of the Banking Stakeholder Group. The EBA envisages submitting the draft ITS to the European Commission by the end of this year.

3. Background and rationale

These draft implementing technical standards ensure uniform conditions of application of the joint decision process for institution-specific prudential requirements with a view to facilitating joint decisions. They establish common procedures and templates to be used for the purpose of reaching effective joint decisions - on capital and liquidity - between the consolidating supervisor and the competent authorities responsible for the supervision of EU subsidiaries in a Member State.

Article 108(5) of the proposed Capital Requirements Directive mandates the European Banking Authority (EBA) to develop draft implementing technical standards specifying the procedures for reaching joint decisions on the application of Articles 72, 84, 92, 100(1)(a) and 100a.

The draft implementing technical standards establish important procedures that will facilitate the interaction and cooperation between the consolidating supervisor and the relevant competent authorities whilst in the process of performing their respective assessments and contributions to the group risk assessment and joint decision documents. Templates for the use of the consolidating supervisor and relevant competent authorities in exchanging information for these purposes have been also developed and included as annexes to these technical standards.

Specific aspects of these draft technical standards – namely, the joint decision on capital - build to some extent on CEBS' Guidelines for the joint assessment and joint decision regarding the capital adequacy of cross-border groups (December 2010). However, additional requirements arising from the level 1 text of the proposed new Directive are reflected in these technical standards, and in particular requirements covering the reaching of liquidity joint decision under Pillar 2.

The EBA has developed these ITS proposals on the basis of the legislative texts for the CRD/CRR agreed by the European Parliament and the Council in April 20131. These texts will be subject to legal-linguistic review before being formally adopted and the final text published in the Official Journal of the European Union. The EBA will review the ITS proposals to ensure that they take account of any changes made in the final text of the CRD/CRR, as well as to take account of any changes arising out of the consultation process.

Following the consultation process and the resulting changes in the current text, the draft implementing technical standards should be submitted to the European Commission by 1 January 2014.

[1] The CRD/CRR text as agreed by the Council can be found at http://register.consilium.europa.eu/pdf/en/13/st07/st07746.en13.pdf / http://register.consilium.europa.eu/pdf/en/13/st07/st07747.en13.pdf

4. Draft implementing technical standards

COMMISSION IMPLEMENTING REGULATION (EU) No …/2013

of XX month 2013

laying down implementing technical standards specifying the joint decision process for institution-specific prudential requirements with regard to the application of Articles 72, 84, 92, 100(1)(a) and 100a of Directive 2013/xx/EU of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Directive [2013/xx/EU] of the European Parliament and of the Council of [dd mmmm yyyy] on prudential requirements for credit institutions and investment institutions[2], and in particular Article 108(5) thereof,

Whereas:

(1) Efficient exchange of appropriate information is essential for the provision of an effective process for the reaching of a joint decision on the adequacy of own funds, required level of own funds held by the group and on institution-specific liquidity requirements.

(2) In order to ensure a consistent application of the process for the reaching of a joint decision, it is important that each step is well defined. A clear process also facilitates exchange of information, promotes mutual understanding, develops relationships between supervisory authorities and promotes effective supervision.

(3) In order to perform the risk assessment of the group of institutions and the assessment of the liquidity risk profile of the group, the consolidating supervisor should have an overview of the activities of all of the entities within the group, including entities operating outside the Union. This Regulation therefore includes a provision promoting interaction between EU competent authorities and third country supervisors in order to enable the former to assess the global risks faced by the group.

(4) Timely and realistic planning for the joint decision process is essential. Every competent authority involved should provide the consolidating supervisor with relevant information from the national level on a timely basis. In order for individual assessments to be presented and interpreted in a consistent and uniform manner, it is necessary to introduce a common template for the results of the national supervisory review and evaluation processes.

[2] OJ…….

(5) This Regulation includes details on the steps to be followed for the performance of the joint risk assessment and the reaching of the joint decision, recognising that some tasks of the joint risk assessment and joint decision process may be performed in parallel and/or sequentially.

(6) The consolidating supervisor should provide the competent authorities involved with all relevant information necessary for the preparation of their individual risk assessment as well as for enabling the reaching of the joint decision on the adequacy of own funds at a consolidated level and on institution-specific liquidity requirements.

(7) The report containing the risk assessment of the group is a core document for competent authorities to use in order to understand, assess and record the assessment of the overall risk profile of the banking group for the purpose of reaching a joint decision on the adequacy of own funds and required level of own funds held by the group. In order to present the overall risk assessment of the group in a consistent manner a common template for this report is introduced.

(8) The report containing the the assessment of the liquidity risk profile of the group of institutions is an important document for competent authorities to use in order to understand, assess and record the assessment of the overall liquidity profile of the group. In order to present the overall liquidity risk assessment of the group in a consistent manner a common template for this report is introduced.

(9) The use of common formats should support meaningful discussions among competent authorities and the robust assessment of cross border banking group risks. Neither the group risk assessment report nor the report containing the group liquidity risk assessment should be limited to an aggregation of individual competent authority assessments, but should lead to the joint assessment of the risk and liquidity profiles of the whole group, elaborating on aspects concerning the interaction of intra-group items.

(10) Establishing clear processes for the content and articulation of the joint decision, in a document, should ensure that it is fully reasoned as well as, facilitate its monitoring and enforcement in cases of non-compliance.

(11) In order to clarify the process to be followed once the joint decision is reached, provide transparency on the treatment of the the outcome of the decision and facilitate approapriate follow-up action where needed, provisions on the communication of the fully reasoned joint decision and on the monitoring of its implementation are included in this Regulation.

(12) Details of the process to be followed for updates of joint decision are elaborated in order to ensure a consistent and transparent approach, as well as appropriate involvement of competent authorities and communication of the outcome.

(13) This Regulation also sets out the process to be followed where no joint decision is reached, covering the timeline for taking decisions in the absence of a joing decision, and the communication and attributes of such decisions. These provisions promote a consistent application of the process within colleges, ensure the articulation of fully reasoned decisions and clarify the treatment of any views and reservations expressed by host supervisors.

(14) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority to the European Commission;

(15) The EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010;

HAS ADOPTED THIS REGULATION:

TITLE I

Subject matter and definitions

Article 1

Subject matter

(1) This Regulation specifies the joint decision processes referred to in Article 108 of Directive 2013/xx/EU of the European Parliament and of the Council as regards:

(a) The application of Articles 72 and 92 of the Directive to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 100(1)(a) to each entity within the group of institutions, taking account of any waiver granted pursuant to Article 6 or Article 9 of Regulation (EU) No xxxx/2013, and on a consolidated basis.

(b) measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 84 of the Directive and relating to the need for institution-specific liquidity requirements, taking account of any waiver granted pursuant to Article 7 or Article 9 of Regulation (EU) No xxxx/2013, and of any consolidated level of application pursuant to Article 10(3) of Regulation (EU) No xxxx/2013, in accordance with Article 100a of the Directive.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(1) ‘relevant competent authorities’ means competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU mixed financial holding company in a Member State;

(2) ‘other competent authorities’ means competent authorities other than relevant competent authorities and other Member State authorities responsible for supervising regulated entities within the group which the consolidating supervisor involves in the group risk assessment;

(3) ‘SREP report’ means the report presenting the outcome of the supervisory review and evaluation process referred to in Article 92 of Directive 2013/xx/EU;

(4) ‘Liquidity SREP report’ means the report presenting the outcome of the supervisory review and evaluation process referred to in Article 92 of Directive 2013/xx/EU, as regards liquidity risks;

(5) ‘group risk assessment report’ means the report containing the risk assessment of the group of institutions referred to in Article 108(2)(a) of Directive 2013/XX/EU;

(6) ‘group liquidity risk assessment report’ means the report containing the assessment of the liquidity risk profile of the group of institutions referred to in Article 108(2)(b) of Directive 2013/XX/EU;

(7) ‘capital joint decision’ means the joint decision pursuant to Article (1)(a);

(8) ‘liquidity’ joint decision’ means the joint decision pursuant to Article (1)(b);

(9) ’extraordinary update’ means an update, in exceptional circumstances, of the joint decision or any decision taken in the absence of a joint decision pursuant to Article 108(1) and (4) of Directive 2013/xx/EU.

TITLE II

Part I - Joint decision process

Article 3

Involvement of other competent authorities and competent authorities of third countries

(1) Apart from the relevant competent authorities, the consolidating supervisor in order to produce the group risk assessment report or group liquidity risk assessment report, may involve other competent authorities and competent authorities of third countries, where appropriate, based on the relevance of the branch or entity within the group and its significance for the local market.

(2) The scope of involvement of other competent authorities and competent authorities of third countries, in accordance with paragraph, 1 shall be decided:

   (a) for the purpose of providing contributions to the group risk assessment and group liquidity risk assessment reports, by the consolidating supervisor and the other competent authorities or competent authorities of third countries concerned;

(b) for the purpose of including contributions from other competent authorities or competent authorities of third country in the draft and final group risk assessment and group liquidity risk assessment reports as annexes, by the consolidating supervisor and the other competent authorities or the competent authorities of third countries concerned;
(c) for the purpose of sharing the draft and final group risk assessment reports and group liquidity risk assessment reports with other competent authorities and competent authorities of third countries, by the consolidating supervisor and the relevant competent authorities.

Article 4

Planning of the joint decision process

(1) The consolidating supervisor and the relevant competent authorities shall agree in advance on a timetable of steps to be followed in the joint decision processes. In the case of disagreement, the consolidating supervisor shall set the timetable after considering the views and reservations expressed by the relevant competent authorities

(2) The timetable shall be updated at least annually and shall include the following steps:

a) agreement on the involvement of other competent authorities and competent authorities of third countries pursuant to Article 3(2);

b) submission of SREP reports and liquidity SREP reports from relevant competent authorities and contributions from other competent authorities and competent authorities of third countries pursuant to Article 3(2) and Article 5;

c) submission of the draft group risk assessment report and draft group liquidity risk assessment report from the consolidating supervisor to relevant competent authorities, other competent authorities and competent authorities of third countries pursuant to Article 3(2), Article 6(5) and Article 6(6);

d) dialogue between the consolidating supervisor and relevant competent authorities, on the draft group risk assessment report and draft group liquidity risk assessment report pursuant to Article 7;

e) submission of the group risk assessment report and group liquidity risk assessment report from the consolidating supervisor to the relevant competent authorities, other competent authorities and competent authorities of third countries pursuant to Article 3(2), Article 8(2) and Article 8(5);

f) submission to the consolidating supervisor of contributions from relevant competent authorities to the draft joint capital decision and to the draft joint liquidity decision pursuant to Article 9(2) and 9(3);

g) submission of the draft capital joint decision document and draft liquidity joint decision document from the consolidating supervisor to the relevant competent authorities pursuant to Article 10(6) and Article 11(8);

h) consultation on the draft capital and liquidity joint decision documents with the EU parent institution and its entities, where required by the legislation of a Member State;

i) dialogue between the consolidating supervisor and relevant competent authorities on the draft capital joint decision and the draft liquidity joint decision;

j) reaching of the capital joint decision and the liquidity joint decision pursuant to Article 12;

k) communication of the joint decisions pursuant to Article 13;

l) agreement on the following year's timetable for the planning of the joint decision processes.

(3) The timeline shall:

a) reflect the scope and complexity of each task, taking account of the size, systemic importance, nature, scale and complexity of the activities of the group to which the joint decision relates, as well as its risk-profile;

b) take account, so far as possible, of the commitments of the consolidating supervisor and the relevant competent authorities under the supervisory examination programme referred to in Article 111(1)(c) of Directive 2013/xx/EU;

c) be subject to review, if appropriate, in particular to reflect the urgency of any extraordinary update undertaken pursuant to Article 20 and Article 21.

Article 5

Individual contributions

(1) In order to facilitate the joint decision's due consideration of the risk assessment of subsidiaries in accordance with Article 108(2) of Directive 2013/xx/EU, the relevant competent authorities shall provide the consolidating supervisor with their SREP reports and liquidity SREP reports in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4.

(2) SREP reports and liquidity SREP reports shall be prepared in the form of the template in Annex 1 and Annex 2 respectively) and may include additional information, if considered relevant.

(3) Other competent authorities and competent authorities of third countries participating in the joint risk assessment process, pursuant to Article 3, may submit their contributions.

Article 6

Preparing the draft group risk assessment report and draft group liquidity risk assessment report

(1) The consolidating supervisor shall prepare a draft group risk assessment report and draft group liquidity risk assessment report based on:

a) its own SREP report or liquidity SREP report on the EU parent institution and the group;

b) the SREP reports or liquidity SREP reports on subsidiaries provided by the relevant competent authorities, and

c) contributions from other competent authorities and competent authorities of third countries, as referred to Article 5(3) and pursuant to Article 3(2).

(2) The SREP reports or liquidity SREP reports referred to in point 1(a) and 1(b) shall be included in the draft group risk assessment report or draft group liquidity risk assessment report as annexes. Subject to the decision referred to in Article 3(2)(b), contributions from other competent authorities and competent authorities of third countries may be annexed.

(3) The draft group risk assessment report and draft group liquidity risk assessment report shall contain the results of the joint assessment of whether the arrangements, strategies, processes and mechanisms implemented by the group and its entities and the own funds and liquidity held by these ensure a sound management and coverage of their risks. The draft group risk assessment report and draft group liquidity risk assessment report shall also include a summary of all underlying assessments and they shall be prepared in the form of the relevant template set out at Annex 3 or Annex 4 respectively.

(4) The consolidating supervisor shall, in accordance with the principle of proportionality, reflect the relevance of the entities within the group and their significance in the local market and shall provide an indication in the draft reports of how these criteria were taken into account.

(5) The consolidating supervisor shall provide the draft reports to the relevant competent authorities on a timely basis for the purposes of the dialogue and in any event by the deadline specified in the timetable referred to in Article 4.

(6) Subject to the decision referred to in Article 3(2)(c), the consolidating supervisor may, provide the draft reports to the other competent authorities and the competent authorities of third countries.

Article 7

Dialogue on the draft group risk assessment report and draft group liquidity risk assessment report

(1) The consolidating supervisor shall decide on the form and scope of the dialogue between relevant competent authorities on the draft group risk assessment report and draft group liquidity risk assessment report.

(2) The consolidating supervisor shall, as part of the dialogue, ensure discussion of the reconciliation of the quantitative information in individual contributions, pursuant to Article 5, with the quantitative information included in the draft group risk assessment report and draft group liquidity risk assessment report, as applicable, at least as regards:

a) the joint decision figures proposed for individual entities included in the SREP reports and the joint decision figures proposed by the consolidated supervisor for the consolidated level, and

b) the joint decision figures proposed for individual entities included in liquidity SREP reports and the joint decision figures proposed by the consolidated supervisor for the consolidated level.

Article 8

Finalisation of the group risk assessment report and the group liquidity risk assessment report

(1) Based on the dialogue referred to in Article 7, the consolidating supervisor shall finalise the group risk assessment report and group liquidity risk assessment report in accordance with the format and content of the draft reports, explaining any material changes. Changes shall reflect the outcome of the dialogue and shall include updates also to the annexes of the group risk assessment report and group liquidity risk assessment report, as appropriate.

(2) The consolidating supervisor shall provide the group risk assessment report and group liquidity risk assessment report to the relevant competent authorities in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4.

(3) In accordance with Article 108(2)(a) of Directive 2013/xx/EU the submission of the group risk assessment report to the relevant competent authorities shall trigger the start of the four month period for reaching the capital joint decision.

(4) In accordance with Article 108(2)(b) of Directive 2013/xx/EU the submission of the group liquidity risk assessment report to the relevant competent authorities shall trigger the start of the one month period for reaching the liquidity joint decision.

(5) Subject to the agreement referred to in Article 3(2)(c), the consolidating supervisor may provide the group risk assessment report and the group liquidity risk assessment report to the other competent authorities and the competent authorities of third countries.

Article 9

Contributions to the draft capital joint decision and draft liquidity joint decision

(1) The relevant competent authorities shall provide their contributions to the draft capital joint decision and the draft liquidity joint decision to the consolidating supervisor in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4. Contributions shall cover all of the entities within the group of institutions falling within the scope of the joint decision set out in Article 1.

(2) Contributions to the draft capital joint decision shall be based on supervisory assessment and shall elaborate on:

a) references to applicable Union and national law relating to the preparation, finalisation and application of the capital joint decision;

b) conclusions of the review and evaluation process referred to in Article 92 of Directive;

c) conclusion on the adequacy of own funds held by the entity, which should be clearly linked to and supported by the conclusions referred to at paragraph (2)(b);

d) conclusion on the required level of own funds for the application of Article 100(1)(a) of Directive;

e) the reference date to which conclusions of paragraphs (2)(b)- (d) relate;

f) information on the minimum prudential requirements applying to each entity pursuant to Article 87 of Regulation (EU) No xxxx/2013 and Articles 99a, 123, 124, 130 and 124a of Directive 2013/xx/EU and on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings.

(3) Contributions to the draft liquidity joint shall be based on supervisory assessment and shall elaborate on:

a) references to applicable Union and national law relating to the preparation, finalisation and application of the liquidity joint decision;

b) conclusions of the review and evaluation process referred to in Article 92 of Directive, relevant for the liquidity risk;

c) conclusion on measures to address any significant matters and material findings relating to liquidity supervision, which should be clearly linked to and supported by the conclusions referred to at paragraph (3)(b);

d) conclusion on the need for institution-specific liquidity requirements pursuant to Article 100a of Directive;

e) the reference date to which conclusions of paragraphs (3)(b)-(d) relate;

f) information on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings.

(4) The consolidating supervisor shall provide contribution to the draft capital joint decision based on supervisory assessment, elaborating on all relevant aspects referred to in paragraph 2:

a) for all of the entities within the group of institutions in its own juristinction falling within the scope of the joint decision process set out in Article 1, and

b) at consolidated level.

(5) The consolidating supervisor shall provide contribution to draft liquidity joint decision based on supervisory assessment, elaborating on all relevant aspects referred to in paragraph 3:

a) for all of the entities within the group of institutions in its own juristinction falling within the scope of the joint decision process set out in Article 1,

b) for the group of institutions.

Article 10

Elaborating on the capital joint decision

(1) The consolidating supervisor shall prepare a fully reasoned draft capital joint decision document covering the group and its entities elaborating on:

a) the names of the consolidating supervisor and the relevant competent authorities reaching the joint decision;

b) the name of the group of institutions and a list of all entities within the group of institutions to which the joint decision relates and applies;

c) the references to applicable Union and national law relating to the preparation, finalisation and application of the capital joint decision;

d) the date of the capital joint decision and of any relevant update(s) thereto;

e) the conclusion on the application of Article 72 and 92 of Directive;

f) the conclusion on the adequacy of the consolidated level of own funds held by the group of institutions;

g) the conclusion on the adequacy of own funds held by each entity within the group;

h) the conclusion on the required level of own funds for the application of Article 100(1)(a) of Directive xx/XX/EU to each entity within the group;

i) the conclusion on the required level of own funds for the application of Article 100(1)(a) of Directive xx/XX/EU on a consolidated basis;

j) the information on the minimum prudential requirements applying to each entity within the group of institutions and on consolidated basis pursuant to Article 87 of Regulation (EU) No xxxx/2013 and Articles 99a, 123, 124, 130 and 124a of Directive 2013/xx/EU, and on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings.

k) the reference date to which the conclusions of paragraphs (1)(e)-(i) relate;

l) the timeline for the implementation of the conclusions of paragraphs (1)(h) and (1)(i), where applicable;

(2) The conclusion referred to in point 1(e) shall elaborate on:

a) the assessment of whether the institution has in place sound, effective and complete strategies and processes to assess, maintain and distribute internal capital and whether such strategies and processes are up to date;

b) the assessment of whether the amounts, types and distribution of such internal capital is adequate to cover the nature and level of risks to which the institution is exposed or might be exposed;

c) the assessment of whether an institution has implemented appropriate arrangements, strategies, processes and mechanisms to comply with Directive 2013/xx/EU and Regulation (EU) No 2013/xxxx and related requirements;

d) the assessment of whether the arrangements, strategies, processes and mechanisms implemented by an institution ensure a sound management and coverage of its risks;

e) information on the application of supervisory measures and powers pursuant to Articles 99 and 100(1)(b)-(k) to address deficiencies, where relevant, identified under paragraphs 2(a)-(d),

(3) The conclusions on the adequacy of own funds at the consolidated and entity level pursuant to paragraphs 1(f) and 1(g) shall refer to and be supported by the conclusion pursuant to paragraph 1(e).

(4) The conclusions on the required level of own funds for the application of Article 100(1)(a) of the Directive xx/XX/EU shall be:

a) expressed for each entity within the group of institutions;

b) expressed on a consolidated basis, and

c) formulated as an amount or a ratio or a combination of both, providing details of the quality of additional own funds required; and

d) linked to and supported by the statement referred to at paragraph (1)(e).

(5) The draft joint decision document shall be presented in such way that all these elements are clearly identifiable for each entity within the group of institutions and at the consolidated level.

(6) The consolidating supervisor shall provide the draft capital joint decision document to the relevant competent authorities in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4 for the purposes of the dialogue.

Article 11
Elaborating on the liquidity joint decision

(1) The consolidating supervisor shall prepare a fully reasoned draft liquidity joint decision document elaborating on:

a) the names of the consolidating supervisor and the relevant competent authorities reaching the joint decision;

b) the name of the group of institutions and a list of all entities within the group of institutions to which the joint decision relates and applies;

c) the references to applicable Union and national law relating to the preparation, finalisation and application of the liquidity joint decision;

d) the date of the liquidity joint decision and of any relevant update(s) thereto;

e) the conclusion on measures to address any significant matters and material findings relating to liquidity supervision of the group of institutions for each entity and for the group;

f) the conclusion on the need for institution-specific liquidity requirements pursuant to Article 100a of Directive 2013/xx/EU within the group of institutions for each entity and for the group;

g) the information on other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings.

h) the reference date to which the conclusions of paragraphs (e) and (f) relate;

i) the timeline for the implementation of the measures and requirements of paragraphs (e) and (f), where applicable;

(2) The conclusion referred to in paragraph 1(e) shall cover all entities within the group of institutions and shall elaborate on:

a) the assessment of whether the institution has implemented robust strategies, policies, processes and systems for the identification measurement, management and monitoring of liquidity risk over an appropriate set of time horizons;

b) the assessment of whether the liquidity (liquidity buffer and stable funding) held by the entities and at group level provides sufficient coverage of its liquidity risks.

(3) The conclusion on the need for institution-specific liquidity requirements referred to in paragraph 1(f) shall be:

a) expressed for each entity within the group of institutions and for the consolidated level, if applicable; and

b) formulated as an amount or a ratio or a combination of both, where appropriate, providing details of the specification of the institution-specific liquidity requirements.

(7) The draft liquidity joint decision document shall be presented in such way that all these elements are clearly identifiable for each entity within the group of institutions and for the consolidated level, if applicable.

(8) The consolidating supervisor shall provide the draft liquidity joint decision document to the relevant competent authorities in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4 for the purposes of the dialogue.

Article 12

Reaching of the capital joint decision and liquidity joint decision

(1) Following the dialogue with relevant competent authorities, the consolidating supervisor shall revise the draft capital and liquidity joint decision documents refered to in Article 10 and 11 respectively as necessary in order to finalise the capital joint decision and the liquidity joint decision.

(2) An agreeement on the capital and liquidity joint decision documents shall be reached by the consolidating supervisor and all relevant competent authorities.

(3) This agreement shall be evidenced in writing by representatives of the consolidating supervisor and relevant competent authorities with appropriate authority to commit their respective authorities.

Article 13

Communication of the capital joint decision and liquidity joint decision

(1) The consolidating supervisor shall provide the capital and liquidity joint decision documents to the management body of the EU parent institution and confirm this communication to the relevant competent authorities in a timely manner and in any event by the deadline specified in the timetable referred to in Article 4.

(2) The relevant competent authorities shall provide to the management bodies of entities within their jurisdiction the part of the capital joint decision and liquidity joint decision document that is relevant for the respective entities.

(3) The consolidating supervisor and the relevant competent authorities shall, where appropriate, have a supervisory discussion with the entities within their jurisdiction on the details of the capital and liquidity joint decisions and their application.

Article 14

Monitoring the application of the capital joint decision and liquidity joint decision

(1) Where an EU parent institution is required to take action in order to:

a) reach the required level of own funds as a result of the capital joint decision at parent entity or consolidated level, or

b) address significant matters or material findings relating to liquidity supervision or to meet the institution-specific liquidity requirements, as a result of the liquidity joint decision, at a parent entity or consolidated level,

the outcome of the supervisory discussion referred to in Article 13(3) shall be communicated by the consolidating supervisor to the relevant competent authorities.

(2) Where an entity within the group of institutions is required to take action in order to:

a) reach the required level of own funds at entity level as a result of the capital joint decision , or

b) address significant matters or material findings relating to liquidity supervision or to meet institution-specific liquidity requirements at an entity level as a result of the liquidity joint decision,

the outcome of the supervisor discussion referred to in Article 13(3) shall be communicated to the consolidating supervisor. The consolidating supervisor shall forward this information to the relevant competent authorities.

(3) The application of the capital joint decision and liquidity joint decision shall, where relevant, be monitored by the consolidating supervisor and the relevant competent authorities in relation to the entities within their jurisdictions.

Part II – Disagreements and decisions taken in the absence of joint decision

Article 15

Process in relation to decisions taken in the absence of joint decision

(1) In the absence of a capital joint decision within the time period referred to in Article 8(3) or a liquidity joint decision within the time period referred to in Article 8(4), decisions taken in the absence of a joint decision in accordance with Article 108(3) of Directive 2013/xx/EU shall be reached within:

a) one month;

b) one month of the provision of any EBA advice following a request for consultation in accordance with Article 108(2) of Directive 2013/xx/EU; or

c) one month of any EBA decision taken in accordance with Article 108(3) of Directive 2013/xx/EU, unless any alternative deadline is set in such decision.

(2) Decisions taken on an individual or sub-consolidated basis in the absence of a joint decision shall be communicated by the relevant competent authorities to the consolidating supervisor. The consolidating supervisor shall include these decisions with its own taken at a consolidated and parent entity level in a single document and shall provide this document to all relevant competent authorities.

(3) In any case where the EBA has been consulted, the document referred to in paragraph (2) shall include an explanation of any deviations from EBA advice.

Article 16

Elaborating on the decisions taken in the absence of capital joint decision

(1) In order to constitute fully reasoned decisions in accordance with Article 108(3) of Directive 2013/xx/EU, decisions taken in the absence of capital joint decision shall be set out in a document that shall elaborate on:

a) the name of the competent authority taking the decision;

b) the name of the entity or the group to which the decision is applied;

c) references to applicable Union and national law relating to the preparation, finalisation and application of the capital decision;

d) the date of the decision;

e) the conclusion on the application of Articles 72 and 92 of Directive 2013/xx/EU;

f) the conclusion on the adequacy of the consolidated level of own funds held by the group of institutions, where applicable;

g) the conclusion on the adequacy of the own funds held by the entity;

h) the conclusion on the required level of own funds for the application of Article 100(1)(a) of Directive 2013/xx/EU to the relevant entity within the group of institutions;

i) the conclusion on the required level of own funds for the application of Article 100(1)(a) of Directive 2013/xx/EU on a consolidated basis, where applicable;

j) information on minimum prudential requirements applying to each entity pursuant to Article 87 of Regulation (EU) No xxxx/2013 and Articles 99a, 123, 124, 130 and 124a of Directive 2013/xx/EU, and on any other relevant prudential or macro-prudential requirements, guidelines, recommendations or warnings;

k) the reference date to which the conclusions of paragraphs (1)(e)-(i) relate;

l) description of how the assessment, views and reservations expressed by the relevant competent authorities and the consolidating supervisor were considered, where relevant;

m) the timeline for the implementation of the conclusions of paragraphs (1)(h) and (1)(i), where applicable;

(2) Decisions taken in the absence of a joint decision shall also elaborate on the paragraphs (2) to (4) of Article 10 on an individual and a consolidated basis, as appropriate.

Article 17

Elaborating on the decisions taken in the absence of liquidity joint decision

(1) In order to constitute fully reasoned decisions in accordance with Article 108(3) of Directive 2013/xx/EU decisions taken in the absence of liquidity joint decision shall be set out in a document and shall elaborate on:

a) the name of the competent authority taking the decision;

b) the name of the entity or the group on which the decision is applied;

c) references to applicable Union and national law relating to the preparation, finalisation and application of the liquidity decision;

d) the date of the decision;

e) the conclusion on measures to address any significant matters and material findings relating to liquidity supervision of the group of institutions, for the group, if the decision refers to the group;

f) the conclusion on measures to address any significant matters and material findings relating to liquidity supervision to the relevant entity within the group of institutions;

g) the conclusion on the need for institution-specific liquidity requirements pursuant to Article 100a of Directive 2013/xx/EU for the relevant entity within the group of institutions.

h) the conclusion on the need for specific liquidity requirements pursuant to Article 100a of Directive 2013/xx/EU for the group, if the decision refers to the group.

(2) Decisions taken in the absence of a joint decision shall also elaborate on the paragraphs (2) to (3) of Article 11 on an entity and group level, as appropriate.

Article 18

Communication of decisions taken in the absence of capital joint decision and liquidity joint decision

(1) The consolidating supervisor shall provide the decision document pursuant to Article 15(2) to the management body of the EU parent institution.

(2) The relevant competent authorities shall provide to the management bodies of the entities within their jurisdiction the part of this document which is relevant for the respective entities.

(3) The consolidating supervisor and the relevant competent authorities shall, where appropriate, have a supervisory discussion with the entities within their jurisdiction on the details of the decisions taken in the absence of any joint decision, and their application.

Article 19

Monitoring of decision taken in the absence of capital joint decision and liquidity joint decision

The application of decisions taken in the absence of any joint decision shall, where applicable, be monitored by the consolidating supervisor and the relevant competent authorities in relation to the entities within their jurisdiction.

Part III – Update and extraordinary update of the joint decision and of decisions taken in the absence of a joint decision

Article 20

Extraordinary update of the joint decision

(1) A request for extraordinary update of the joint decision on the application of Article 100(1)(a) or Article 100a may be initiated by the consolidating supervisor or any relevant competent authority pursuant to Article 108 point (1) or (4) of Directive 2013/xx/EU. All such requests shall be communicated to all relevant competent authorities by the consolidating supervisor. The extraordinary updates shall follow the process set out in this Regulation starting from Article 9.

(2) A request for an extraordinary update of the joint decision at an entity level – other than the parent - that are initiated by either the consolidating supervisor or any relevant competent authority, with the intention for this update to be addressed on a bilateral basis, shall be written and fully reasoned and shall be communicated to all relevant competent authorities, through the consolidating supervisor, indicating a deadline by when a reaction from relevant competent authorities is needed. In addition and in order for the relevant competent authorities to decide whether to initiate an update on a non-bilateral basis, the communication shall include a draft joint decision document that shall meet the essential elements of the joint decision document pursuant to Article 10 or 11. If no request for an update from any of the relevant competent authorities is received within the deadline indicated in the communication above then the update will be addressed bilaterally between the consolidating supervisor and the competent authority responsible for the supervision of the entity starting from Article 9, with contributions to and agreement on the joint decision expected only from the consolidating supervisor and this competent authority.

(3) Requests for extraordinary update of the joint decision on the application of Article 100(1)(a) or 100a at the parent or consolidated level that are initiated by either the consolidating supervisor or any relevant competent authority shall follow the process starting from Article 9. Where a relevant competent authority does not wish to submit a contribution to the updated joint decision in accordance with Article 9, the consolidating supervisor shall prepare the updated joint decision document on the basis of the competent authority's contribution to the original joint decision.

(4) The timeline to be followed for any extraordinary update shall be adjusted and reflect the urgency of this update pursuant to Article 4(3)(c).

Article 21

*Update and extraordinary update of decisions taken in the absence of joint decisio*n

(1) The annual update of the decisions taken in the absence of joint decision shall follow the steps pursuant to Article 4(2), in so far as each step is relevant for the application of Article 92(4).

(2) Any extraordinary update of decisions taken in the absence of joint decision pursuant to Article 108(4) shall follow the process set out in this Regulation starting from Article 9.

TITLE IV

Final provisions

Article 22

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

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

Done at Brussels,

For the Commission

The President

[or]
For the Commission
On behalf of the President
[Position]

5. Accompanying documents

5.1 Draft Impact Assessment / Cost- Benefit Analysis

5.1.1 Introduction

In December 2010, the Committee of European Banking Supervisors (CEBS) issued the Guideline for the joint assessment and joint decision regarding the capital adequacy of cross-border groups (GL 39). These Guidelines provide guidance on how to cooperate on the risk assessment process and how to apply the CRD provisions regarding ICAAP (Article 123), SREP (Article 124) and the prudential measures subject to the joint decision process (Article 136(2)).

The CEBS issued also the "Guidelines for the Operational Functioning of Supervisory Colleges" (GL 34) which in Chapter 5 includes guidelines on the way the work of the college fits into the cooperative framework defined by the GL39.

The empowerment for issuing the draft implementing technical standards stipulated in Article 108(5) of CRD IV covers similar scope of supervisory cooperation as the above mentioned guidelines (reach of joint decision on institution specific prudential requirements).

CEBS guidelines GL39 and GL34 were issued under the "comply or explain" regime and have not been binding for the national supervisory authorities. The draft implementing technical standard, which build to some extent on the existing Guidelines, will be binding ensuring maximum harmonisation across the EU.

The present impact assessment evaluates the level of magnitude of the costs and benefits stemming from the add-on elements to be implemented by the draft ITS. The impact assessment is based on a questionnaire that has been developed and on which answers where provided by members of relevant substructures of the EBA. This questionnaire intended to assess, inter alia, the level of implementation of the existing Guidelines GL39 and Chapter 5 of GL34 by the national supervisory authorities and to assess the impact of the envisaged preferred policy options.

5.1.2 Procedural issues and stakeholder consultation

While developing the draft implementing technical standards and before the publication of the consultation paper it was deemed important to consult the supervisory authorities on the policy options and the approach favoured by the draft ITS, with special focus on the proposed procedures for interaction between consolidating supervisors and host supervisors as well as on the templates to be used for the reach of the joint decision on institution specific requirements.

In this context, an impact assessment questionnaire was developed, organised in the following main sections:

- Level of implementation of the existing Guidelines (GL39, and chapter 5 of GL34);
- Current supervisory framework;
- Comparison between current and future, as proposed by the draft ITS, framework;
- Estimated costs and benefits of the draft ITS.

The sections below describe in detail the results from the analysis of the submitted responses for all these four areas.

5.1.3 Level of implementation and current supervisory framework

85% of the responses received reported 100% level of implementation, while the remaining ones reported 75% level of implementation, indicating that the Guidelines have almost been fully implemented.

5.1.4 Comparison between the current and future supervisory framework

In general the proposed process and the templates in the draft ITS are described as clearer and easier to follow both for consolidating and host supervisory authorities. As “similar” are regarded from the perspective of credit institutions and other stakeholders.

5.1.5 Problem definition

The main problem that the EBA is called to address is the specification of the process followed by supervisory authorities in order to reach joint decisions pursuant to Article 108 of CRD within the required timeline.

To accomplish this, the EBA bears in mind that the goal of every BTS is to achieve the maximum possible harmonisation as a mean to reach the objectives of the level playing field, the prevention of regulatory arbitrage opportunities, enhance supervisory convergence and legal clarity. On the other hand, the resolution of the identified problem should account for reducing the compliance burden of the credit institutions and the supervisory authorities.

5.1.6 Objectives

The impact assessment has been carried out having in mind that the four general objectives of the CRD are met and the negative externalities have been contained[3]. However, for the purpose of the forthcoming analysis only three general objectives are more relevant to the specific ITS:

- Enhance financial stability (G-1); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own funds held by the group of institutions with respect to its financial position and risk profile and on the required level of own funds for each entity within the group of institutions and on a consolidated basis; these fully reasoned joint decisions will be directly linked and supported by the results of supervisory assessments on the arrangements, strategies, processes and mechanisms implemented by the institutions and evaluation of risks to which the institutions are or might be exposed. The joint decisions are expected to have a (in)direct positive effect on the confidence sentiment on both the depositors and other stakeholders. This will take place after the consultation paper has been published and the EBA has communicated to the public the timeline and the purpose of the implementation of the new rules. The fact that the EU member states are to apply harmonised rules will prohibit the abrupt movements of funds and enhance financial stability.

- Enhance safeguarding of depositor interests (G-2); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own funds each entity within the group of institutions will be required to hold adequate amount of own funds reflecting the individual risk profile of an entity and the risk profile of a group of institutions. This should ensure that identified risks are appropriately covered by own funds. This will not any more jeopardise the depositors of one jurisdiction over the other, safeguarding the depositors interest across EU member states, and

- Ensure international competitiveness of EU banking sector (G-3); through provisions facilitating the reach of fully reasoned joint decisions on the adequacy of own each European banking groups should have a strong capital position reflecting the assessment of the individual risk profile.

The operational (specific) objectives that are the most relevant and addressed, implicitly or explicitly, by this impact assessment are the following:

- Prevent regulatory arbitrage opportunities (S-3) by ensuring the uniform process of reaching joint decision by competent authorities across the Member States with binding steps and outcomes of each step in the process;

- Enhance legal clarity (S-4) by defining the detailed process of reaching joint decision accompanied with a common templates for the communication of the SREP assessment and group risk assessment report, by defining the attributes of the joint decision documents and by

[3] For more information refer to the “Commission Staff Working Paper – Impact Assessment” accompanying the document “Regulation of the European Parliament and the Council Regulation on prudential requirements for the credit institutions and investment firms” (http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_regulation_en.pdf)

including provisions covering the communication of the join decision process to the supervised entities;

- Reduce compliance burden (S-5); by stipulating all individual steps for the reach of the joint decision, specifying templates to be used for communication of national SREP results and for the joint risk assessment report, noting binding attributes of the joint decision document in order this to be considered as a fully reasoned joint decision and rules for monitoring of the implementation of the joint decision. The inclusion of all these elements in the draft ITS is expected to facilitate competent authorities adherence to the legal requirements of the level one text and credit institutions compliance with the resulting obligations as well as ensure legal clarity of the outcome.

- Enhance level playing field (S-6); by introducing the uniform process of reaching joint decision covering the same scope of the supervisory assessment and defining all required attributes of the joint decision outcome reflected in the group risk assessment report and joint decision document; and

- Enhance supervisory cooperation and convergence (S-7); by introducing common communication tools among supervisory authorities through the introduction and use of templates, uniform processes and binding attributes of joint decision document. The draft ITS include also provisions covering the extraordinary update of the joint decision and binding attributes of an individual decision.

5.1.7 Policy options: analysis and comparisons / preferred options

The current impact assessment study considered the following policy options as being the most relevant for the draft technical standards;

I. Developing the Implementing Technical Standards based on the GL39 and aspects of the GL34 (chapter 5);

II. Developing the Implementing Technical Standards from scratch, ignoring the already implemented guidelines.

The Guidelines developed by CEBS were the product of consultation among EU supervisory authorities and were perceived as pointing at the right direction. Since many of the non-binding provisions introduced by the GL have been adopted by the majority of the competent authorities, there is no meaning for the EBA to re-launch the discussion on the same topics. Therefore the aforementioned GLs will constitute the baseline for the implementation of the present ITS. The present ITS will make the rules depicted in the GL legally binding for all member states and at the same time will build upon them to clarify the details that had not been addressed by the GLs, To this end, the present impact assessment will address some second-order options to choose among.

The following second-order policy options were identified as the most important ones in terms of resulting incremental costs and benefits. The questionnaire invited the supervisory authorities to note the five most important incremental costs and benefits and to identify the policy options from which these costs and benefits resulted.

i) Provisions requiring the involvement of other competent authorities and third country competent authorities;

The policy options that were discussed with regards to the involvement of other competent authorities and third country competent authorities are noted below:

a) Not to include any reference to the involvement of other competent authorities and third country competent authorities in the ITS, leaving such a possibility at the discretion and judgement of the consolidating supervisor and other EU competent authorities;

b) To include in the draft ITS provisions under which other authorities shall be invited, where appropriate.

The policy option that was generally supported by competent authorities was policy option (b), as it was deemed that any decision on the involvement of other competent authorities and third country competent authorities taken at the beginning of the JRAD process with discussion between the

consolidating supervisor and the relevant competent authorities and by following the provisions of level 1 text, will improve transparency in the decisions taken and ensure that possibilities of involving other competent authorities and third country supervisors will be carefully considered and explored to the maximum extent possible.

ii) Provisions requiring agreement on the timeline to be followed for the reach of the JD;

The policy options that were discussed here were:

a) To define a unified timeline with common reference dates that would be binding across all colleges;

b) To develop provisions that will deliver appropriate balance between i) flexibility needed in order for each college to organise the timeline of the JRAD process according to its specifities and ii) convergence in the organisation of the JRAD cycle by requiring binding steps of the timeline that will need to be agreed in advance.

The preferred policy option is policy option (b), given that, as stated below, it is believed to deliver the appropriate balance between flexibility and convergence in the organisation of the JRAD cycle and the minimum steps to be followed across colleges.

iii) Provisions requiring contributions to the draft risk assessment report by using the SREP report template;

The policy options that were discussed here were:

a) To develop a SREP report template that will be mainly used as a communication tool between the competent authorities involved in the JRAD process.

b) As alternative policy option should be regarded the possibility of not developing and including a SREP report template in the draft ITS.

The policy option that was favoured here by the members of the SG is policy option (a), given that the template was considered as an important tool for communicating the results of national SREP in a common way, without touching on any methodological issues on how supervisory review and evaluation process is performed at national level. Thus, while developing this template, possible interactions and links with the work performed by other substructures of EBA and in particular the Guideline on common SREP (article 102 of CRD IV) were dully considered. In order to avoid any confusion between the role of this template and the objectives of the ITS in general, the recitals of the draft implementing technical standards include references to a possible update of the SREP report template in case this is needed as a result of the Guidelines on common SREP which are expected to be developed by mid 2014.

iv) Provisions requiring contributions from the competent authorities in the draft joint decision;

The policy options that were discussed on this Article are presented below:

a) To include provisions in the implementing technical standards requiring host supervisory authorities to contribute to the draft joint decision document; while

b) another alternative option was to include appropriate details in the SREP report template, without requiring contributions of the draft joint decision document. This option might not resolve the current practices on focusing the requested contributions on the risk assessment, failing to provide full reasoning of the required level of own funds.

As joint decision process includes two main outcomes (group risk assessment report and joint decision document) it was also decided that contributions from competent authorities should consist of two separate parts, the second of which will be a draft contribution to the joint decision (option (a)). This contribution shall provide clear statement on the required level of own funds and appropriate reasoning supporting such a proposal. It was deemed that these provisions will bring convergence in the different practices followed across colleges both with regards the process and the content and reasoning of the joint decision document. In addition, it is believed that by requiring the host supervisory authorities to submit contributions that are not only limited to the SREP report, but they also include a proposal for the joint decision will ensure a better link between the assessment performed and the proposed outcome of such an assessment.

v) Provisions covering communication of the joint decision to the parent and its entities;

The policy options that were discussed here are presented below:

a) One option would be not to specify details of the communication and rely only on the level 1 text.

b) A second option was to include provisions that will specify the communication with a banking group and also to whom the communication should be addressed.

Given the need for clarity on the roles and responsibilities and for increased transparency on the actual communication and the recipient of this communication, competent authorities favoured policy option (2).

vi) Provisions covering the monitoring of the implementation of the joint decision;

The policy options that were discussed under this Article are presented below:

a) Possibility of including provisions on the monitoring of the implementation; and

b) The possibility of not including provisions covering the monitoring of the implementation of the joint decision can be regarded as an alternative option. However, it was not supported from SG members given that it was felt important to include provisions in the ITS that will promote transparency and clarity among competent authorities on any follow-up actions taken in order to ensure adequate and efficient monitoring of the joint decision.

Option (a) was supported as being the one expected to enhance legal clarity on the steps following the reach of joint decision, especially in cases where an action is needed from the credit institution in order to implement the joint decision by a specific date.

vii) Provisions covering the case of extraordinary update of joint decision;

The policy options that were discussed under this Article are presented below:

a) Developing provisions requiring communication of the intention of either the consolidating supervisor or any of the relevant competent authorities to trigger extraordinary update of the JD on a bilateral basis to all other competent authorities giving them the possibility to initiate a general update of the joint decision;

b) Other option would be to rely only on the Level 1 text.

Level 1 text covers the possibility of an extraordinary update of the joint decision and specifies that this could be done on a bilateral basis. This situation was discussed in detail while drafting the ITS and a decision was made to include a provision requiring that the intention to trigger extraordinary update of the JD on a bilateral basis shall be communicated to all relevant competent authorities giving them the possibility to initiate a general update of the joint decision (option (a)). It was deemed that this would ensure transparency in the “treatment” of the extraordinary updates and give the possibility to any of the competent authorities to be fully informed and assess the possibility of triggering a general extraordinary update.

viii) Elaborating on the joint decision documents;

The policy options that were discussed under this Article are noted below:

a) Develop a common template for the joint decision document;

b) To develop provisions specifying the minimum binding attributes of the joint decision document.

Option (a) was not supported by several competent authorities as being too burdensome and restrictive, thus a need for certain flexibility in the form of the joint decision, that will allow competent authorities to structure the joint decision document based on the particularities of each case, was finally supported. In addition, option (b) was considered as an important policy option in order to ensure that joint decisions are articulated in such way that they qualify as fully reasoned joint decisions.

ix) Provisions covering the process of unilateral decisions taken in the absence of joint decision;

The policy options that were discussed under this Article are noted below:

a) One option was to rely only on the Level 1 text, where the process for dealing with the absence of joint decision is described;

b) Develop provisions specifying the details of the process of formalising and communicating unilateral decisions.

Level 1 text does not specify all the details covering such a situation, especially details on the timeline and communication issues. It was decided that the unified application of the joint decision process would be ensured if the details of unilateral decisions were elaborated in the ITS (policy option (b)).

x) SREP report template and joint risk assessment report template (Annex 1 and 3 of the draft ITS);

Policy options considered while developing the SREP report are covered under iii).

a) Template for the group risk assessment report was developed based on the structure of the SREP report template to ensure that all aspects of individual contributions are considered in the group risk assessment report. The template includes also additional items where group related issues (e.g. diversification) are reflected.

b) The alternative to the option (a) above was to creatre templates from the scratch something which would not only be timeconsuming and inefficient, but it may also result and allow inconsistencies between individual contributions and joint risk assessment report.

5.1.8 Cost-benefit Analysis

(1) Benefits

For what concerns consolidating supervisors, member states participating to the questionnaire expected several incremental benefits from the ITS.

- The most frequent policy option mentioned as beneficial refers to the provision related to the timeline to be followed for the reach of the joint decision. In this respect, supervisors anticipate a timely joint decision thanks to the clear description of the operational steps of the process and thanks to the binding deadline it implies.

- The second most frequent provision pointed out is the one related to the use of the SREP template for the contribution of host supervisors. According to the answers received, the use of a uniform template has the advantage of clarifying the responsibility and the level of involvement of the contributors in the joint decision process. Moreover, many supervisors pointed out the beneficial of gathering homogenous data which facilitates the treatment and could even lead to cost cutting. Another benefit expected from this provision is the increase of transparency.

- The provision related to the process in case of unilateral decision was also considered positive by several supervisors because it clarifies the process in case of disagreement.

- Another important incremental benefit expected form the ITS, from a consolidating supervisors' point of view, is the improvement of the quality of the work performed, thanks to provisions related to the involvement of all relevant competent authorities, the requirement of contribution from college members in the draft joint decision and also thanks to the process for triggering an extraordinary update of the joint decision.

From a host authority perspective, the main provisions in the ITS mentioned as beneficial in the joint decision process are similar to the ones mentioned for consolidating supervisors, although the incremental benefits are not always the same.

- The majority of supervisors pointed out that the use of a uniform template for their contribution in the risk assessment will not only clarify their involvement but it will also and foremost facilitate the unification of the approach and the internal procedures at national level which will generate a gain in efficiency.

- The second most frequent provision mentioned is related to the process of unilateral decision in the absence of joint decision which has the advantage of clarity and will therefore facilitate cross border supervision.

- Host supervisors also welcome the provision related to the timeline which clarifies the process and, as a consequence, allows clear workflow, better organisation and planning. This provision was also highlighted as beneficial for host authorities since it will increase the commitment to meet the deadline.

- Policy option 8 related to the elaboration of the joint decision document was also mentioned several times by supervisors as it is expected that this provision will increase transparency and provide useful information.

From other stakeholder's point of view and more especially from credit institutions perspectives, benefits expected from the ITS can be summarised as follows:

- The most frequent policy option mentioned was related to provisions covering the communication of the joint decision to the parent company and its entities. Supervisors expect incremental benefits in the field of communication. Efficiency, transparency and harmonisation were the terms used by supervisors.

- Policy option number 8 was also mentioned several times on the benefit side of the ITS. Supervisors consider that the attributes of the joint decision will clarify the reasoning which will enhance the support of the decision reached by college members.

- The benefit of having more clarity on the legal framework surrounding the process for reaching joint decision on capital was also mentioned.

(2) Costs

- Home supervisors have pointed out several potential costs on the new ITS on JD. More specifically, from consolidating supervisors perspective authorities have pointed out the new ITS may deprive the joint decision procedure from flexibility due to the fact that there is no provision regarding the concept of materiality both in terms of size and qualitative characteristics in the context of the Group as a whole. In addition, the increasing time for the new formalities has been pointed out and it has also been underlined that changes should be undertaken in the procedures of the joint decision per competent authority. In order to implement these changes, additional resources are needed.

- Other policy options that has been frequently mentioned is Policy Option 10: “SREP report template and joint risk assessment report template (Annex 1 and 3 of the ITS)”. According to the home supervisors the extended version of the new templates sets impediments because the implementation of the templates will require changes in the current national practices and templates, additional training costs for the use and filling in of the templates and effort to aggregate and consolidate the expected data. The second more frequent options selected has been Policy Option 8 and Policy Option 5. Regarding Policy Option 8 : “Elaborating on the joint decision document”, the home authorities have make a special reference in the lack of flexibility and the additional workload that its going to bring to the JD document and to the competent authorities respectively, due to increasing formalities and the additional effort required to present the needed details. As far as Policy Option 5 : “Provisions covering communication of the joint decision to the parent and its entities (Article 10)” , the incremental costs stemming from the provisions for a more detailed report that is expected to be created, sent and discussed, that will require extra time commitment from the home supervisors.

- Under the Host perspective, the conclusions are quite similar. Policy Option 10 is the one referred the most for the same reasons mentioned above, from a home perspective, while Policy Option 2 “Provisions requiring agreement on the timeline to be followed for the reach of the JD” was mentioned along with concerns on the additional workload that will result in preparing the timeline. and fears that such workload may slow down the whole process.

- As far as the other stakeholders are concerned, a few issues regarding the costs on other stakeholders were raised, and most of them are focused only on costs affecting credit institutions. The policy options that were mentioned the most are Policy Option 2, Policy Option 3 and 10, focusing mainly on incremental costs that the credit institutions may face,

due to additional information that are expected to be required or changes on the timelines on national level.