

Position Paper

Comments on EBA/CP/2025/15

Draft Regulatory Technical Standards on cooperation and colleges of supervisors for third-country branches under Article 48p(7) of Directive 2013/36/EU

General

Our Association represents international banks, investment firms and asset managers having business premises established in Germany, in the form of subsidiaries or branches. A significant number of our member institutions are currently licensed under the German third country branch framework and operate significant businesses under such license. They will in the future qualify as third country branches as defined and regulated by CRD VI. Therefore, the future regulatory framework is vitally important for our members.

Against this background, we would like to take the opportunity to comment on the draft Regulatory Technical Standards on cooperation and colleges of supervisors for third-country branches under Article 48p(7) of Directive 2013/36/EU (the “draft RTS”) as follows:

Questions for consultation

Question 1: Do you consider that the provisions on the establishment and functioning of colleges of supervisors for third-country branches set out in Chapter 1 are appropriate and sufficiently clear?

First, we think that the draft RTS are not yet sufficiently clear, because there are possible circumstances that it does not take into account yet.

The draft RTS refer to Art. 48p of CRD VI, which sets out different options for the establishment of a college. Art. 48p (2)(a) specifies: “Where a college of supervisors has been established in relation to the subsidiary institutions of a third-country group, the class 1 third-country branches of the same group shall be included within the scope of that college of supervisors”.

However, in Art. 48p (2)(c) CRD VI it is stated: “Where the third-country group has class 1 third-country branches in more than one Member State or at least one class 1 third-country branch and one or more subsidiary institutions in the Union that are not subject to Article 116, a college of supervisors shall be established in relation to those third-country branches and subsidiary institutions”. Therefore, for the establishment of the college of supervisors, there are two options for third country groups with both TCBs and subsidiaries in the EU.

However, the draft RTS does not consider the possible scenario where a third-country group will have TCBs and subsidiaries subject to Art. 116 CRD, but no college of supervisors has been formed. In this case, following the entry into force of CRD VI, would a college of supervisors be formed in accordance with Art. 48p (2)(a) or Art. 48p (2)(c) CRD? We would ask the EBA to clarify this in the draft RTS. It would be preferable to avoid a situation where a college of supervisors is established with the lead competent authority designated as the NCA of the largest TCB, only for this to be changed once a college of supervisors is established for the subsidiary institutions of the third country group in the EU under Art. 116 CRD.

Second, Art. 14 of the draft RTS includes details of information to be exchanged between supervisors in relation to the SREP process for branches. However, as the requirements in Art. 48n of CRD VI are to be developed in separate guidelines by the EBA, we feel that these requirements should not be too prescriptive and take account of future changes.

Question 2: Do you consider that the provisions on the general cooperation and information exchange for the supervision of third-country branches (outside of the college context) set out in Chapter 2 are appropriate and sufficiently clear?

In general, the RTS is very prescriptive and detailed. We think that more flexibility should be given to the regulators to exchange information in a way that they deem appropriate. By reducing detail in the RTS and allowing the college to rely on principles, this might better ensure that members take a pragmatic and proportionate approach to third country groups under supervision.

Question 3: Do you consider that the draft RTS provide an appropriate level of proportionality adapted to specific context and nature of third-country branches?

In general, yes. However we would like to encourage EBA to be mindful of Art. 48p(5) CRD VI. TCBs are part of the same legal entity as the head undertaking and therefore are well considered within the group supervisory college and crisis management group at head office level. As outlined in Art. 48p(5) CRD, cooperation between colleges on EU and head office level is desirable and essential.