

PUBLIC CONSULTATION

DRAFT ECB REGULATION CONCERNING REPORTING ON SUPERVISORY FINANCIAL
INFORMATION

TEMPLATE FOR COMMENTS

Institution/Company	
Association of Foreign Banks in Germany (Verband der Auslandsbanken in Deutschland e.V.)	
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Please separate your comments per issue, citing the relevant article of the draft Regulation concerning reporting on supervisory financial information where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 3.

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Name of Institution/Company	Association of Foreign Banks in Germany	Country	Germany
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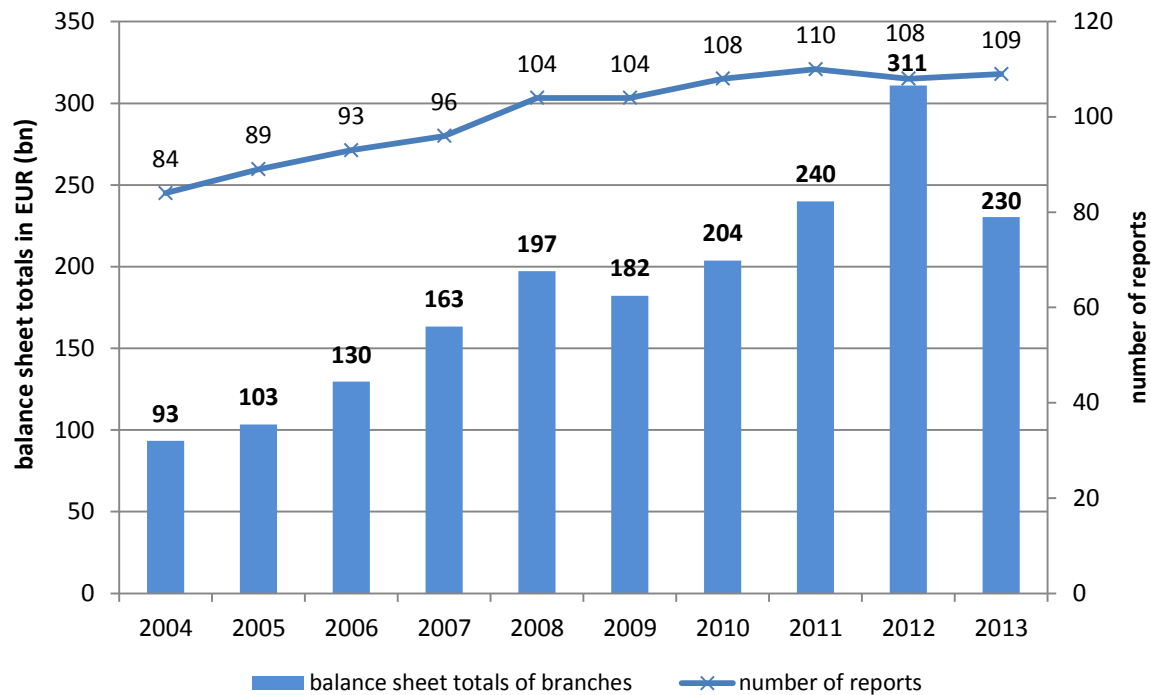
COMMENTS ON THE DRAFT ECB REGULATION CONCERNING REPORTING ON SUPERVISORY FINANCIAL INFORMATION

Issue	Article	Comment	Concise statement why your comment should be taken on board
Exemption from the reporting requirements for less significant branches in participating Member States of credit institutions established in non-participating Member States whose asset-value is below the threshold of	Art. 12 para. 7 sent. 1 lit. b)	Amendment	<p>The Association of Foreign Banks in Germany appreciates the ECB's decision not to overburden certain less significant supervised entities with non-proportional reporting requirements.</p> <p>Especially with regards to a branch established in a participating Member State by a credit institution established in a non-participating Member State, the Association acknowledges the envisaged rule for the exemption for less significant branches from any additional reporting of supervisory financial information (FINREP) if the total value of the branch's assets is below € 1 billion.</p> <p>In accordance with the proportionality principle, we would like to outline why a higher threshold would be more appropriate in meeting the economic reality of bank branches established within the</p>

€ 1 billion

Eurozone of credit institutions from non-participating member states. With regards to the Bundesbank's statistical data available for the German banking market (cf. illustration 1), we have conducted an analysis of the average balance sheet total of bank branches in Germany (cf. illustration 2).

Illustration 1: number of reports and balance sheets totals of branches in Euro (bn)

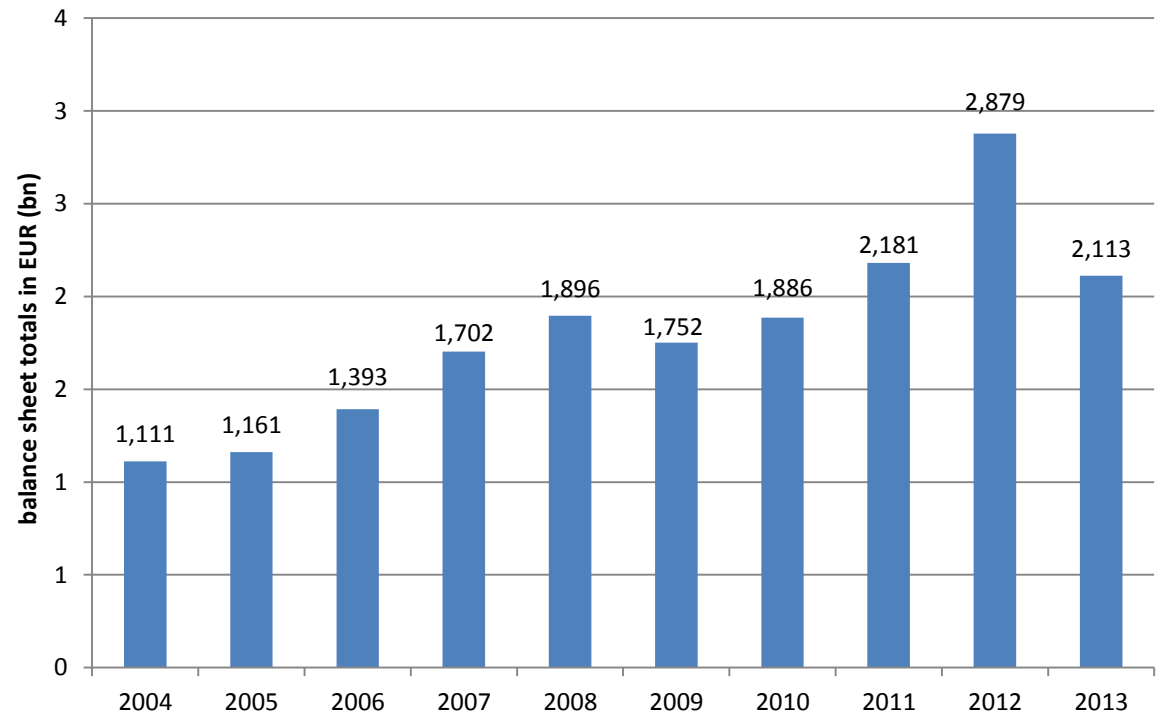




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Illustration 2: average balance sheet totals of German branches of foreign credit institutions



In Germany, with its large amounting banking market (with largely scaled sides of suppliers and demanders of banking services), it is absolutely possible for a branch to conduct business that could generate a high balance sheet total: e.g. in 2013, the average balance sheet total of all reporting branches was **€ 2,113 billion**. Therefore, in such cases, the value of the total-assets is likely to go



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		<p>beyond the envisaged threshold of € 1 billion. In comparison to this, bank branches in minor scaled banking markets of other participating Member States are likely to stay below the exemption threshold.</p> <p>Furthermore, FINREP on branch level is a reporting burden unprecedented so far as the FINREP reporting bases on a provision from the Capital Requirements Regulation (EU) No. 575/2013. The CRR is generally applicable only to the (solo) institution level and the group level. The provisions of reporting financial information arising from Article 99 CRR as well as the accompanying Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 will be made applicable on branch level by the draft ECB regulation.</p> <p>It is understandable that the ECB aims at obtaining a comprehensive view of the risk profile of the activities of a branch established in a participating Member State by a credit institution established in a non-participating Member State in order to evaluate any (systemic) risks to the financial sector or the real economy of the respective participating Member State. Nevertheless, we would like to outline that a passported branch can in many ways not be seen as an autonomous entity. They are only part of a unitary credit institution. Most decisions concerning the risk profile of a branch's activities are controlled by the out-branching institution in the respective non-participating Member State. This can also have a direct impact in the assignment of assets to a branch within the whole booking/accounting of the institution headquartered in a non-participating Member State. It is to be doubted if the analysis of a branch's FINREP figures, which can only represent a certain part of the respective institution's business activities, resulting profits and risk profile, can result in valuable information for the evaluation of risks to the financial sector or the real economy of the respective participating Member State.</p> <p>In order to appropriately meet the proportionality principle as stated in margin no. 20 of the con-</p>
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			<p>sultation document, we therefore propose that the exemption from the reporting requirements for less significant branches of credit institutions established in non-participating Member States shall be applied if the asset-value of the respective branch is below the threshold of € 2 billion.</p> <p>Recommendation: Article 12 paragraph 7 sentence 1 lit. b) of the proposed ECB regulation should be amended as follows:</p> <p>“(b) a branch established in a participating Member State by a credit institution established in a non-participating Member State shall not be included in the reporting of supervisory financial information if the total value of its assets is below EUR ± <u>2</u> billion.”</p>
<p>Scope of the reporting obligation for less significant branches in participating Member States of credit institutions established in non-participating Member States</p>	<p>Art. 12 para. 2 and 5</p>	<p>Amendment</p>	<p>The Association of Foreign Banks of Germany welcomes the ECB’s will to embed a proportionate approach with regards to the different scopes of reporting requirements.</p> <p>As mentioned before, FINREP on branch level is a unprecedented reporting burden for those less significant branches established in a participating Member State by a credit institution established in a non-participating Member State that are not covered by the exemption rule.</p> <p>In Germany, branches of EU/EEA credit institutions acc. to sec. 53b German Banking Act underlie only general accounting provisions according to sec. 340 para. 1 sent. 2 German Commercial Code (“Handelsgesetzbuch”, HGB). As a consequence, there is no duty for those branches to conduct own annual financial statements (and especially not on a quarterly basis) on the branch level. This means that there might be, e.g., no value adjustments on branch level that should be needed for the envisaged FINREP reporting according to the draft ECB regulation.</p> <p>From this it follows that the affected branches need to invest as there is mostly no adequate reporting software given on branch level to fulfil the reporting requirements proposed by the draft</p>



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			<p>ECB regulation. For the German case, it should be noted that branches of EU/EEA credit institutions in Germany are mostly exempted from the national reporting requirements concerning financial information acc. to the recently setup German Financial Information Regulation (“Finanz-informationenverordnung”, FinaV).</p> <p>Against this background, the scope of the reporting for a less significant branch in a participating Member State of a credit institution established in a non-participating Member State should be re-evaluated. On the one hand, it should be kept in mind that such new (reporting) burdens can disadvantage a less significant branch in a participating Member State of a credit institution established in a non-participating Member State in comparison to a less significant branch in a participating Member State of a credit institution that is also established in a participating Member State. As a consequence, the desired level playing field might not be given with regards to branches established acc. to the European Passport of the Capital Requirements Directive. On the other hand, it should also be noted that even in order to conduct macro-prudential analyses of the participating Member States, a FINREP report on branch level might not be of that significance as it only represents a part of a unitary company (i.e. a credit institution).</p> <p>We therefore propose to adjust the reporting obligations for less significant branches of credit institutions established in non-participating Member States that will not be covered by the aforementioned exemption rule: instead of the simplified supervisory financial reporting scope as specified in Annex I of the draft ECB regulation, those branches ought to submit preferably the supervisory financial reporting data points as specified in Annex III (or, at least, the oversimplified supervisory financial reporting as specified in Annex II).</p> <p>Recommendations: Article 12 paragraph 2 and 5 of the proposed ECB regulation should be amended as follows:</p>
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			<p>“2. The supervisory financial reporting referred to in paragraph 1 shall take place with the frequency specified in Article 9 of Regulation (EU) No 680/2014 and shall include the common minimum information specified in Annex I, <u>whereas branches established in a participating Member State by a credit institution established in a non-participating Member State apply the common minimum information specified in Annex III.</u>”</p> <p>“5. The supervisory financial reporting referred to in paragraph 4 shall take place with the frequency specified in Article 11 of Regulation (EU) No 680/2014 and shall include the common minimum information specified in Annex I, <u>whereas branches established in a participating Member State by a credit institution established in a non-participating Member State apply the common minimum information specified in Annex III.</u>”</p>
<p>Submission of reports for less significant branches in participating Member States of credit institutions established in non-participating Member States</p>	<p>Art. 12 para. 2 and 5</p>	<p>Amendment</p>	<p>Acc. to Art. 14 of the ECB’s framework regulation (EU) No. 468/2014 dated 16 April 2014, for less significant branches the respective host national supervisory authority shall exercise the powers of the competent authority. In the case of branches in participating Member states, the recipient of the reports shall be acc. to Article 12 paragraph 2 and 5 of the proposed ECB regulation the NCA of the host participating Member State.</p> <p>As described before, reporting FINREP figures is an absolutely new challenge for branches of EU/EEA institutions. This means that there are generally no capabilities or systematics to conduct a FINREP reporting on branch level. The internal organisation of most cross-border active banks is often very centralised and streamlined, just as the requirements of the CRR are to be fulfilled on the level of the credit institution. Branches in other EU Member States only supply the information necessary for the institution level. There was until now no need to calculate and conduct any FINREP reporting on branch level.</p> <p>From our current knowledge, many branches will resort to the core banking capacities and FINREP</p>

			<p>calculation capabilities of their respective head offices in non-participating Member States in order to conduct the foreseen FINREP reports for respective branches in participating Member States. Mostly, these head offices are obliged to report FINREP on a group level acc. to CRR und the accompanying ITS on Reporting and have therefore setup reporting infrastructures and methods.</p> <p>We therefore propose an amendment to the draft ECB regulation that in case of a less significant branch in a participating Member State of a credit institution established in a non-participating Member State, the way of submission the respective FINREP report will additionally allow a submission of the head office (of the credit institution) established in a non-participating Member State to the host NCA in the respective participating Member State.</p> <p>Recommendation: Article 12 of the proposed ECB regulation should be amended by a new paragraph 12:</p> <p><u>“12. In case of branches established in a participating Member State by a credit institution established in a non-participating Member State, their reports, as specified in paragraphs 2 and 5, can also be submitted by its head office in the non-participating Member State to the host NCA in the respective participating Member State.”</u></p>
<p>Reports of less significant branches in participating Member States of credit institutions established in non-participating Member States</p>	<p>recital 3</p>	<p>Clarification</p>	<p>According to recital 3 of the proposed ECB regulation, the exercise of the discretion to require credit institutions to use international accounting standards as applicable under Regulation (EC) No 1606/2002 for supervisory reporting pursuant to Article 24 para. 2 of Regulation (EU) No 575/2013 shall be outside the subject matter of this regulation.</p> <p>As mentioned before, EU/EEA branches in Germany underlie only general accounting provisions according to the German Commercial Code. The specific obligations for credit institutions do not</p>

			<p>apply to EU/EEA branches.</p> <p>Consequently, many branches work with a data household on International Financial Reporting Standards (IFRS) basis in order to facilitate the interconnection to the head office.</p> <p>Recommendation: In this context, it should be clarified that less significant branches which are not covered by the exemption rule can apply for their respective FINREP reports either national accounting frameworks (nGAAP) or IFRS.</p>
Scope of the reporting obligation for less significant SSM stand-alone entities	Art. 12 para. 2 and 5	Amendment	<p>The Association of Foreign Banks in Germany would like to highlight, too the situation of subsidiaries from credit institutions established in a third country, i.e. outside the EU or EEA. These subsidiaries are classified as less significant SSM stand-alone entities and will be generally obliged to report FINREP.</p> <p>Especially with regards to less significant SSM stand-alone entities established in a participating Member State by a credit institution established in a third country, the Association acknowledges the envisaged rule for a lighter reporting burden (i.e. the supervisory financial reporting data points as specified in Annex III of the draft ECB regulation) if the total value of the entity's assets is below € 1 billion. All other less significant SSM stand-alone entities which exceed this threshold are obliged to apply the simplified supervisory financial reporting scope as specified in Annex I of the draft ECB regulation.</p> <p>In the case of less significant SSM stand-alone entities that are subsidiaries from credit institutions established in a third country, it must be acknowledged that there are mostly no infrastructure for and no experience with the reporting of FINREP on the parent entity (or group) level, as the respective third country is outside the EU/EEA. The envisaged reporting scope as specified in Annex I could therefore be an un-proportionate burden for those less significant SSM stand-alone entities</p>

			<p>because the parent entity or group will not be able to give assistance for the implementation of FINREP calculation and reporting acc. to the CRR and the ITS on Reporting.</p> <p>We therefore propose to adjust the reporting obligations for less significant SSM stand-alone entities whose total value of assets is not below € 1 billion: instead of the simplified supervisory financial reporting scope as specified in Annex I of the draft ECB regulation, those branches ought to submit preferably the oversimplified supervisory financial reporting as specified in Annex II.</p> <p>Recommendations: Article 12 paragraph 2 and 5 of the proposed ECB regulation should be amended as follows:</p> <p>“2. The supervisory financial reporting referred to in paragraph 1 shall take place with the frequency specified in Article 9 of Regulation (EU) No 680/2014 and shall include the common minimum information specified in Annex II[, <u>whereas branches established in a participating Member State by a credit institution established in a non-participating Member State apply the common minimum information specified in Annex III</u>].”</p> <p>“5. The supervisory financial reporting referred to in paragraph 4 shall take place with the frequency specified in Article 11 of Regulation (EU) No 680/2014 and shall include the common minimum information specified in Annex II[, <u>whereas branches established in a participating Member State by a credit institution established in a non-participating Member State apply the common minimum information specified in Annex III</u>].”</p>
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