

**REPORT TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL AND THE COMMISSION ON THE  
TREATMENT OF INCOMING THIRD COUNTRY  
BRANCHES UNDER THE NATIONAL LAW OF  
MEMBER STATES, IN ACCORDANCE WITH ARTICLE  
21b(10) OF DIRECTIVE 2013/36/EU**

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**EBA**

EUROPEAN  
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# Abbreviations

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AIFMD	Directive 2011/61/EU
AML/CFT	Anti-money laundering / countering terrorist financing
CA	Competent authority
CRD	Directive 2013/36/EU on capital requirements
CRR	Regulation (EU) No 575/2013 on capital requirements
CRO	Chief risk officer
DGSD	Directive 2014/49/EU on deposit guarantee schemes
EBA	European Banking Authority
FSB	Financial Stability Board
F&P	Fit and proper
GAAP	Competent authority
IFRS	International financial reporting standards
ICT	Information and communications technology
ICAAP	Internal capital adequacy assessment process
ILAAP	Internal liquidity adequacy assessment process
IPU	Intermediate parent undertaking
LE	Large exposures
LSI	Less significant institution
ML/TF	Money laundering / terrorist financing
MoU	Memorandum of understanding
MS	Member State
OECD	Organisation for Economic Cooperation and Development
SEP	Supervisory examination programme

TC	Third country
TCB	Third country branch
TCCI	Third country credit institution
TCG	Third country group
TCHA	Third country home authority
UCITS	Directive 2009/65/EC
USD	Unites States Dollar

## Executive summary

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This Report has been developed in accordance with the mandate conferred upon the EBA by paragraph (10) Article 21b CRD, as amended by Directive 2019/878/EU.

Recent structural changes have renewed the EU's interest in the regulation of TCBs. Cross-border regulatory reforms in the aftermath of the financial crisis requiring the establishment of an intermediate parent undertaking when the relevant conditions are met, as well as the departure of the UK from the EU, have determined the reorganisation of the presence of TCGs within the EU, including via TCBs, and have prompted the legislator to call for an assessment of the state of play and of further harmonisation of EU law.

A mapping of the TCBs established in the EU reveals an increase in their presence and activity in the EU from 31 December 2019 to 31 December 2020. Based on data as at 31 December 2020, there are 106 TCBs, established in 17 MSs, holding total assets aggregate amount of EUR 510.23 bn, of which 86% is concentrated in four MSs. Compared to data as at 31 December 2019, this picture represents + 14 TCBs, equal to an increase of 15%; +3 MSs in which TCBs are established; + EUR 120.52 bn in total assets held by TCBs, representing an increase of 30.93%. Whilst it is acknowledged that the situation is still subject to changes due to the post-Brexit reorganisation of TCGs' presence in the EU and the implementation of the IPU framework, the comparison has identified an increasing trend in the use of branches by TCGs as a form of accessing and operating in the EU market.

Against this background, the stocktaking exercise on current national laws and practices has brought to the fore varied regulatory and supervisory approaches across the EU, and the consequent divergent treatment of TCs in different Member States ('MSs').

Current national regulatory regimes and supervisory practices can be divided into 'subsidiary-like' and branch approaches. Whilst the former tends to treat TCBs as subsidiaries by applying CRR-like (national) requirements to the extent possible, the latter acknowledges that the TCB is not a separate legal entity from the TCCI. This consideration entails greater reliance on the TC-equivalent regulatory regime, supervisory practices and assurance of the TCCI's compliance with prudential requirements. These two different approaches coexist in various MSs where, in addition to the default subsidiary-like approach, MSs envisage the application of simplified treatment. The latter is akin to the branch approach, considers TCBs as branches and entails an increased reliance on the TCB's country of origin, which has to meet a high standard of regulatory and supervisory requirements to be eligible for simplified treatment. It is also worth noting that these approaches are not an expression of uniform regulatory and supervisory categories, but instead present national variations in the relevant prudential elements and associated supervisory practices, giving rise to a varied regulatory and supervisory scenario.

The Report acknowledges that whilst TCBs are only allowed to operate within the MS where they are established and do not have passporting rights, arbitrage opportunities are reduced but not completely excluded given the national regulatory and supervisory fragmentation. Structuring



opportunities may be supported by asymmetries in the level (national and EU) of regulation and supervision applicable to TCBs and subsidiaries of institutions belonging to TCGs, either when both are established within the same MS or in respect of the choice of the MS of establishment of the TCBs or of the subsidiary to carry out EU activities. This might be particularly relevant in the context of the framework relating to the IPU, considering that whilst assets held by the TCBs are computed to determine whether an IPU needs to be established, the TCB itself is not included within the IPU consolidated perimeter.

In addition, the Report draws attention to potential risks associated with TCBs' operations, in particular in the wholesale market, where conducting activities with financial interlinkages may result in significant interconnections with the EU internal market and generate a risk of negative spillovers.

In light of the significant volume of activities carried out via TCBs, as evidenced by the amount of assets held by such entities in the EU, and of the current fragmented state of play, the related arbitrage opportunities and potential associated risks, the Report takes the view that further harmonisation of the EU legal framework applicable to TCBs is needed.

In light of the results of the stocktaking exercise and data collection, the proposals for further EU harmonisation rely on a mix of branch and subsidiary-like approaches in accordance with the principle of proportionality, coupled with risk prevention and mitigation measures. Such recommendations focus on EU centralised equivalence assessment, effective cooperation supported by the conclusion of MoUs with third country home authorities, the scope of authorisation, prudential requirements (notably capital, liquidity and internal governance), AML/CFT aspects, reporting, booking arrangements and recovery plans. The recommendations also encompass the introduction of a subsidiarisation mechanism as risk prevention and mitigation measure. This mechanism should apply to TCBs reaching a certain size and/or other quantitative and qualitative risk indicators, as well as to TCBs carrying out deposit-taking activity of covered deposits. The identification and calibration of the relevant thresholds should be based on an impact assessment. It is also made clear that appropriate consideration should be given to continuous supervisory dialogue with the TCB/TCCI and effective mutual cooperation with the TCHA in devising potential mitigation measures that could ensure safe and sound prudential management of the TCB's activities and associated risks.

The recommendations for further harmonisation are generally set out in high-level terms that need to be developed further based on a comprehensive impact assessment. The EBA stands ready to provide the necessary assistance for that purpose. In the meantime, the EBA will keep monitoring the establishment of TCBs within the EU.

## Background information

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Under the current EU legal framework a general principle applies to TCBs. It requires MSs not to apply to branches of credit institutions having their head office in a third country provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Union (Article 47(1) CRD)<sup>1</sup>. EU law, however, does not go further in prescribing how this result is to be achieved, leaving MSs and competent authorities scope for variation in the regulatory requirements and supervisory approach applied at the national level.

To gain an understanding of the regulatory requirements and supervisory practices in force at the national level and to assess the opportunity for further harmonisation, Article 21b, paragraph (10) CRD, has mandated the EBA, 'by 28 June 2021, [...] to submit a report to the European Parliament, to the Council and to the Commission on the treatment of third-country branches under national law of the Member States. That report shall, at least, consider:

- (a) whether and to what extent supervisory practices under national law for third country branches differ between Member States;
- (b) whether different treatment of third country branches could result in regulatory arbitrage;
- (c) whether further harmonisation of national regimes for third country branches would be necessary and appropriate, especially with regard to significant third country branches.'

This mandate complements monitoring obligations introduced in the CRD. New paragraph (1a) of Article 47 CRD requires TCBs that have been authorised by competent authorities to report – at least on an annual basis – to the competent authority the following information:

- '(a) the total assets corresponding to the activities of the branch authorised in that Member State;
- (b) information on the liquid assets available to the branch, in particular availability of liquid assets in Member State currencies;
- (c) the own funds that are at the disposal of the branch;
- (d) the deposit protection arrangements available to depositors in the branch;
- (e) the risk management arrangements;
- (f) the governance arrangements, including key function holders for the activities of the branch;
- (g) the recovery plans covering the branch; and

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<sup>1</sup> Pursuant to Article 47 CRD (as modified by CRDV), all authorisations for branches granted to credit institutions having their head office in a third country are required to be notified to the EBA, including any subsequent changes to such authorisations. Further reporting requirements have also been established, with Member States being subject to the obligation (applicable from 28 December 2020) to require branches to report at least annually a range of information, including total assets corresponding to the activities of the branch, own funds at the disposal of the branch, deposit protection arrangements, risk management, governance, and recovery plans. Some of this information is required to be transmitted to the EBA pursuant to Article 47(2).

(h) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.’

In addition, new paragraph (2) of Article 47 CRD requires CAs to notify the EBA some information about the TCBs established in their jurisdiction, namely:

‘(a) all the authorisations for branches granted to credit institutions having their head office in a third country and any subsequent changes to such authorisations;

(b) total assets and liabilities of the authorised branches of credit institutions having their head office in a third country, as periodically reported;

(c) the name of the third-country group to which an authorised branch belongs.’

From a supervisory perspective, new paragraph (2a) of Article 47 CRD introduces close cooperation requirements between the CA responsible for the supervision of the TCB and the CA of institutions that are part of the same TCG, ‘to ensure that all activities of that third-country group in the Union are subject to comprehensive supervision, to prevent the requirements applicable to third-country groups pursuant to this Directive and Regulation (EU) No 575/2013 from being circumvented and to prevent any detrimental impact on the financial stability of the Union.’

These newly introduced notification and cooperation requirements are relevant steps in moving towards a coordinated supervision and monitoring of the potential risks associated with TCBs. Such requirements, however, focus on transparency towards the CAs and intra-EU cross-border cooperation, but do not impact the currently applicable regulatory requirements and supervisory practices that are anchored at the national level.

The mandate conferred on the EBA for the purposes of this Report aims, firstly, to conduct a stocktake of the national laws and assess if and to what extent they differ. To this end, the EBA has launched a survey addressed to CAs on the current national laws and supervisory practices that are applied to TCBs in each MS. The areas covered by the survey include:

a) authorisation: requirements (including equivalence, MoU and reciprocity), scope of authorisation, assessment practices and processes;

b) prudential regulatory requirements: capital, liquidity, leverage, governance, macroprudential requirements, Pillar3;

c) supervisory requirements and practices: including categorisation of branches for supervisory purposes; availability of supervisory powers; supervisory review, reporting requirements, on-site supervision, cooperation with the home country authority

d) AML/CTF authorisation requirements and supervisory practices.

The survey ran from 3 April to 19 June 2020; 29 CAs (i.e. all EU 27 CAs and 2 CAs from the EEA countries (IS, NO) have submitted their responses. It is worth noting, however, that not all CAs have responded to all the questions, in particular due to the lack of practical experience and legislation in light of the absence of TCBs in the jurisdiction concerned. It is also worth noting that the results illustrated in this Report do not take into account changes incorporated into national law after the end date of the survey.

In addition, specific data collections relating to TCBs currently established in the EU were performed in two rounds, the first with a reference date of 31 December 2019 – therefore not including branches of UK credit institutions as TCBs; the second with a reference date of 31 December 2020, including branches of UK credit institutions as TCBs, on the assumption that the UK had left the EU as at that reference date.

Chapters 1, 2, 3 and 4 of this Report describe the results of the survey and of the data collections, also on the basis of subsequent bilateral liaison with the CAs, and illustrate that whilst there are common aspects across national regulatory and supervisory approaches, the latter diverge significantly, with the consequence that TCBs from the same TC may ultimately be subject to different regulatory and supervisory treatments in different MSs.

Chapter 5 of the Report draws the conclusions of the stocktaking exercise and lays down the way forward for further harmonisation. It acknowledges that arbitrage opportunities are not excluded by TCBs' restricted scope of authorisation, but may be supported by national regulatory and supervisory fragmentation and favoured by asymmetries in the level (national and EU) of regulation and supervision applicable respectively to TCBs and subsidiaries of TCGs. This might be relevant in the context of the framework relating to the IPU, considering that whilst assets held by the TCBs are computed to determine whether an IPU needs to be established, the TCB itself is not included within the IPU consolidated perimeter. Whilst the Report acknowledges that the TCBs may only operate within the MS in which they are established and do not have passporting rights, therefore excluding direct interconnections with clients in other MSs, the Report draws attention to TCBs' operations in the wholesale market with financial interlinkages, which may result in interconnections with the EU internal market and potentially generate a risk of negative spillovers.

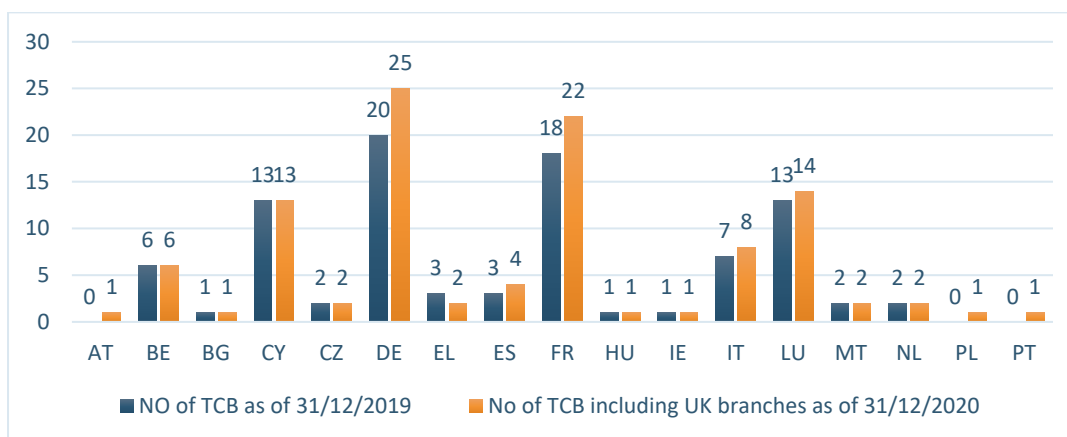
In light of the above, high-level policy recommendations for further EU harmonisation are put forward that combine the need to maintain the openness of the EU financial market for the benefit of international trade and finance with the need to ensure sound and prudent management of TCBs across the EU. Attention is also given to ensuring equal treatment of TCs across the EU. The Report acknowledges the need for a comprehensive impact assessment to specify and appropriately calibrate the policy solutions put forward in the high-level recommendations. The EBA stands ready to provide its assistance for any follow-up analysis that may be needed. In the meantime it will continue to monitor the presence of TCBs within the EU.

# 1. Third country branches in the EU

## 1.1 Overview

- Based on data as at 31 December 2020, 106 TCBs, distributed across 17 MSs, are established in the EU. The aggregate amount of total assets held by TCBs on that date, is EUR 510.23<sup>2</sup> bn, 86% of which is concentrated in four MSs: BE, FR, DE and LU.
- This picture, which includes post-Brexit changes, marks a significant increase compared to data as at 31 December 2019, notably: + 14 in the total number of TCBs (representing an increase of 15%); +3 MSs in which TCBs are established; + EUR 120.52 bn in the total assets held by TCBs, representing an increase of 30.93%. As a matter of fact, based on data as at 31 December 2019, 92 TCBs were established in the EU with total assets equal to EUR 389.70 bn. In terms of geographical distribution, TCBs were present in 14 MSs, with 82.13% of the total assets held by TCBs established in (the same) four MSs: BE, FR, DE and LU.
- This increase has to be viewed in relation to the structural change in the market prompted by the departure of the United Kingdom (UK) from the EU on 31 December 2020. In light of temporary national transition regimes and the ongoing reorganisation of TCGs' presence in the EU, it may be assumed that this picture is still subject to changes.

**Figure 1. Number of TCBs per MS**

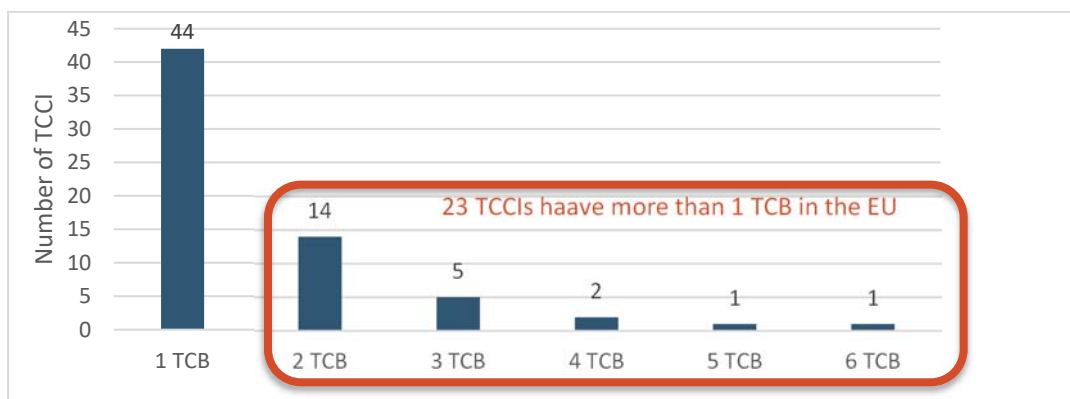


- As at 31 December 2020, TCBs established in the EU originated from 23 TCs. The most represented are China (18 TCBs), UK (15 TCBs), Iran (10 TCBs), USA (9 TCBs) and Lebanon (9 TCBs). TCCIs often have TCBs in more than one MS.
- With regard to the number of TCBs that each TCCI has established in the EU, based on data as at 31 December 2020, 23 out of 67 TCCIs have TCBs in more than 1 MS. In particular, the

<sup>2</sup> This amount refers to 105 out of 106 TCBs.

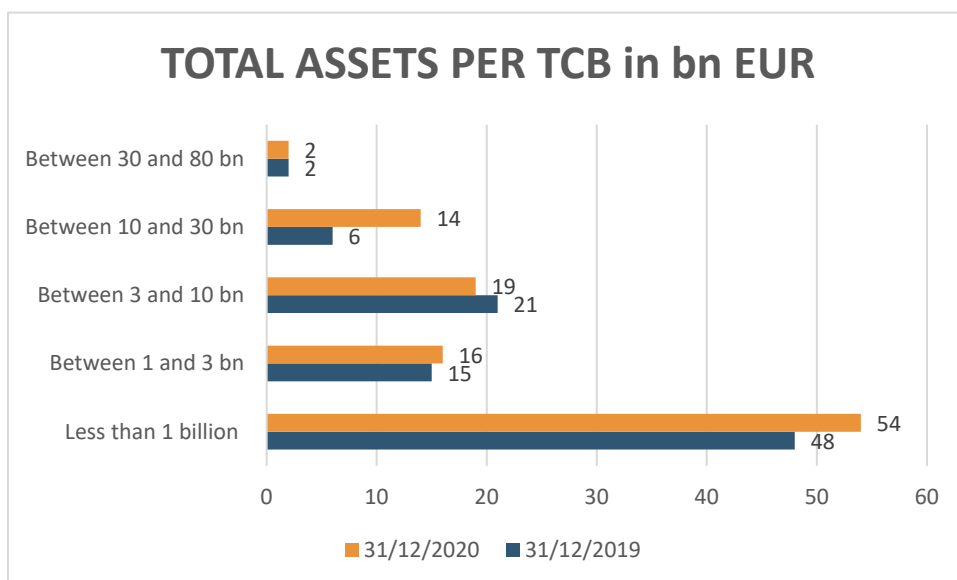
majority of such TCCIs have 2 TCBs in the EU. The TCCI with the most widespread presence in the EU has TCBs in 6 different MSs.

**Figure 2. Number of TCBs per TCCI in the EU as at 31 December 2020**



6. In addition, some TCCIs also have one or more subsidiaries in the EU. In particular, based on data as at 31 December 2020, 14 TCCIs have both a TCB and a subsidiary in the same MS. Of these, 9 TCCIs have one subsidiary and two or more TCBs in the EU. Two TCCIs have a double presence comprising a TCB and a subsidiary in more than one MS.
7. In general terms, the amount of total assets held by TCBs is usually limited. As at 31 December 2020, 54 out of the 106 TCBs held less than EUR 1 billion in total assets. However, the three largest TCBs held 28.55% of all TCBs’ aggregate total assets amount.

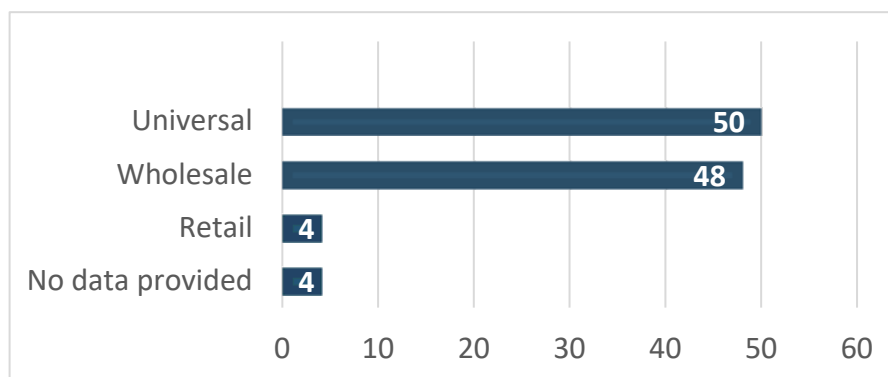
**Figure 3. Amount of total assets per TCB in EUR bn<sup>3</sup>**



<sup>3</sup> Data refer to 105 out of 106 TCBs.

8. For the sake of completeness in mapping the TCBs' presence within the EU, it is worth considering the ratio of TCBs' aggregate total asset amount per MS as at 31 December 2019 against a) the size of the national banking system, and b) the national GDP.
9. The first ratio is calculated based on the relationship between the reported TCB aggregate total assets per MS and CBD2<sup>4</sup> data as at 31 December 2019. The second is determined on the basis of reported TCB aggregate total assets per MS and the national GDP of the MS in which TCBs are located as at 31 December 2019<sup>5</sup>.
10. The ratio between TCB aggregate total assets per MS and CBD2 data is lower than 1% in 7 MSs, between 1% and 10% in 6 MSs and increases to over 25% in 1 MS.
11. The ratio between TCB aggregate total assets per MS and the national GDP of the MS in which TCBs are established produces heterogeneous ranges. It is lower than 1% in 6 MSs, between 1% and 20% in 6 MSs, and between 75% and 125% in 2 MSs.
12. As for business models, based on data as at 31 December 2020, TCBs are split: approximately half of them operate as universal banks (50 out of 106), while almost half operate only as wholesale banks (48 out of 106). 4 TCBs operate as a retail bank. In 4 cases, information on the business model has not been provided.

**Figure 4. TCBs' business models as at 31 December 2020**

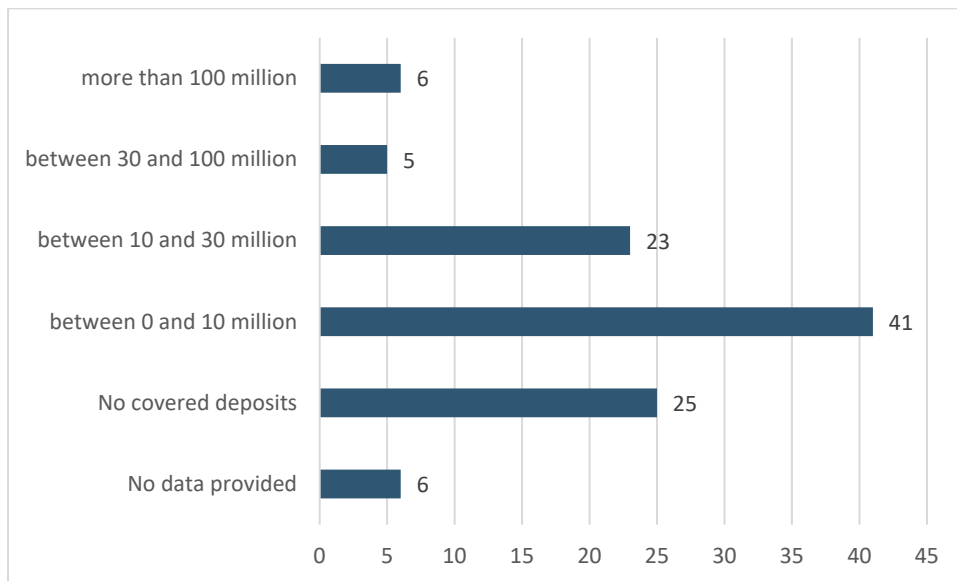


13. The amount of covered deposits held by TCBs is generally limited. As at 31 December 2020, 64 out of the 106 TCBs had less than EUR 30 million in covered deposits; 25 TCBs do not collect covered deposits. Finally, for 6 TCBs the relevant CAs were not in a position to provide the data. Based on the data collected, the highest amounts of covered deposits held by TCBs range from EUR 846.5 million to EUR 666.2 million and EUR 207.8 million.

<sup>4</sup> CBD2 refers to data published by the ECB regarding 'Domestic banking groups and stand-alone banks, foreign (EU and non-EU) controlled subsidiaries and foreign (EU and non-EU) controlled branches' for December 2019.

<sup>5</sup> This type of analysis cannot be conducted for 2020, due to the unavailability of CBD2 data and GDP data for 2020 at this stage.

**Figure 5. Amount of covered deposits per TCB in EUR million as at 31 December 2020**





## 2. National regulatory and supervisory approaches

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### 2.1 TCB-specific or generic sources of national regulation

14. As a general observation, the CRR/CRD provisions are the point of reference for all CAs for the regulation and supervision of TCBs. At this juncture, it suffices to observe that 7 CAs (BE, DK, ES, GR, HR, HU and SK) indicated that they had a specific regulatory regime for TCBs in place that is based on the CRD/CRR package; 11 CAs (AT, DE, FI, FR, IE, IT, LU, NL, PT, RO and SI) specified that TCBs are generally subject to the provisions of the CRD/CRR package by analogy, unless specific exceptions apply. 8 CAs (BE, ES, FR, GR, IE, IT, NL and PT) reported that they apply (or envisage applying) the principle of **proportionality** to regulatory requirements.
15. As illustrated below, in addition to the above distinctions, significant regulatory and supervisory differences depend on the specific approach adopted, whether it is ‘subsidiary-like’ or ‘branch-like’. The latter can also be a simplified regime resulting from the application of exemptions or waivers from the default regulatory requirements.

#### 2.1.1 National regulatory and supervisory approaches

16. Two main approaches may be identified across the EU with regard to the prudential and supervisory treatment of TCBs:
  - (a) The first, followed as a default choice by the majority of MSs (AT, BE, CZ, DE, ES, FI, FR, GR, IT, LU, LV, PT, PL, SI and SK) envisages the application to the TCB of largely the same regulatory requirements (to the extent legally possible) applicable to credit institutions authorised under the CRR/CRD as regards solvency, liquidity and organisational requirements (**‘subsidiary-like approach’**). Considering the differences between a branch without a legal personality and a credit institution, such requirements are necessarily CRR-like and ultimately national in content and specificities. Furthermore, as explained in more detail in letter c) below, although this approach is applied as a default choice in the above-mentioned MSs, in some of them it coexists with a different simplified treatment that is applied to TCBs when certain conditions envisaged by each national law are met and depending on the TCCI’s country of origin.
  - (b) The second approach, adopted as the exclusive approach by 6 CAs (BG, CY, IE, LT, MT and SE), is based on an acknowledgement that the TCB is not a separate legal entity from the TCCI. Hence it implies a form of prudential and supervisory treatment, including with regard to capital requirements, that is more dependent on the TCCI’s financial soundness, on the TCHA’s supervision and on the TC equivalence of the regulatory regime and supervisory practices (**‘branch-specific approach’**). As a

consequence, TCBs established in these MSs are not required to fulfil CRR prudential requirements such as capital, liquidity, large exposure etc... However, there are variations within this group of MSs. For instance, in respect of liquidity requirements one CA (IE) imposes the LCR requirements, while others apply national requirements.

One CA (NL) reported that it applies a combined approach, envisaging the application of CRD governance and operational arrangements in line with the subsidiary-like approach, and the non-application of solvency requirements, but the imposition of liquidity Pillar 1 at branch level in line with the branch-specific approach. The prior assessment of the equivalence of the TC regulatory regime and supervisory practices, the existence of effective cooperation with the TCHA and of the effective supervision of the TCB as part of the TCCI are also assessed by some CAs as a condition for authorisation to be granted.

17. A variation of the branch-specific approach is adopted by some MSs (DE, ES, FR, GR, IT and LU) that apply the subsidiary-like approach as a default option. Such an approach consists of applying simplified prudential treatment to the TCB, which is acknowledged to be a non-separate legal entity, via the non-application of some or all prudential requirements, where certain conditions set out in national law are met (**'simplified treatment'**). Such conditions usually relate to the equivalence of the TC regulatory regime and supervisory practices; the existence of effective cooperation with the TCHA, including the conclusion of MoUs, an assurance that the TCB will be supervised by the TCHA as part of the TCCI; and the financial soundness of the TCCI. 3 CAs (DE, ES and FR) also place specific importance on reciprocity in the treatment of the outgoing branches of national credit institutions by the TCHA as a condition for applying simplified treatment. 2 CAs (ES and FR) reported that the application of the simplified regime is subject to a commitment by the TCCI to support the TCB. Depending on national regulations, this may comprise a letter of guarantee to cover all obligations arising from the TCB.
18. Several variations of the simplified treatment exist across the EU. Whilst in the majority of MSs that envisage subsidiary-like and simplified treatment (DE, FR, GR and IT), the application of the latter is regulatory-based and CAs have no discretion about the exemptions from the prudential requirements, in other MSs the granting of waiver(s) is discretionary subject to a risk assessment of the TCB (ES and LU). In one MS (FR), whilst the application of the simplified treatment is regulatory-based, the number and types of waivers that can be granted may depend on reciprocity in the prudential treatment of outgoing branches of French credit institutions in the TC. Furthermore, differences among the national simplified treatments also relate to the flexibility in the application of waivers, which can be granted in whole or in part (FR and GR). There are also significant differences with regard to the number and types of waivers/exemptions that are envisaged by each national simplified treatment: whilst in 2 MSs (GR and IT), the application of the simplified treatment entails an automatic exemption from all CRR requirements (notably capital, liquidity, leverage, ICAAP, ILAAP and LE), in ES and FR exemptions from such prudential requirements are assessed on a case-by-case basis; in other MS it is limited to capital requirements and to LE (DE and LU) and does not extend to liquidity requirements, which

are not exempted/waived. ES reported that it never waives liquidity requirements; in addition, it specified that requirements which can be waived include capital, LE, leverage, capital buffers and remuneration. ICAAP and ILAAP are not applied in practice, regardless of whether waivers are granted or not. It is also worth noting that almost all CAs in which the simplified treatment is applied (DE, ES, FR, IT and LU) reported that the minimum initial capital is never waived/exempted. In addition, DE and LU apply LE requirements with regard to the TCCI capital requirements. DE also grants exemptions from the application of capital buffers. It should also be noted that all CAs but one (LU) reported that the simplified treatment is applied at the moment of authorisation provided that the relevant conditions are met.

19. In light of the above, it is clear that the simplified treatment actually amounts to the branch-specific approach. At the same time, however, with regard to the national variations described (in particular the number and types of requirements that are exempted/waived, reciprocity and other pre-conditions), the simplified treatment does not constitute a homogeneous regime across the EU.
20. A common aspect of the national approaches described above is the impact of equivalence of the TC regulatory regime and supervisory practices on the authorisation and treatment of TCBs in the EU MS. Whilst this is a significant aspect to consider, its performance at the national level is a significant element of variation in the current national approaches. Overall, TCs currently benefiting from application of the simplified regime in the various MSs concerned include Australia, Brazil, Canada, China, Japan, Jersey, Qatar, South Korea, Switzerland, Taiwan, UAE, the UK and the USA; however, due to different assessments at the national level, TCBs with their head office in these jurisdictions may be subject to different treatments in the various MSs.

### 2.1.2 Regulatory requirements

21. The varied EU landscape resulting from most commonly applied regulatory requirements of the subsidiary-like and the branch-specific approach are illustrated in figure 6.

**Figure 6. Application of regulatory requirements per CA: subsidiary-like and branch-specific approach**

Requirement	AT	BE	BG	CY	CZ	DE	DK	EE	GR	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	Tot.
Capital	X	X			X	X	X		X	X	X	X	X			X		X	X			X	X	X		X	X	18
Liquidity	X	X		X	X	X	X		X	X	X	X		X	X	X	X	X			X	X	X	X	X	X	X	22
Leverage	X				X	X			X	X	X	X				X	X	X					X	X		X	X	14
Governance	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	26
Reporting	X	X	X	X	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	25

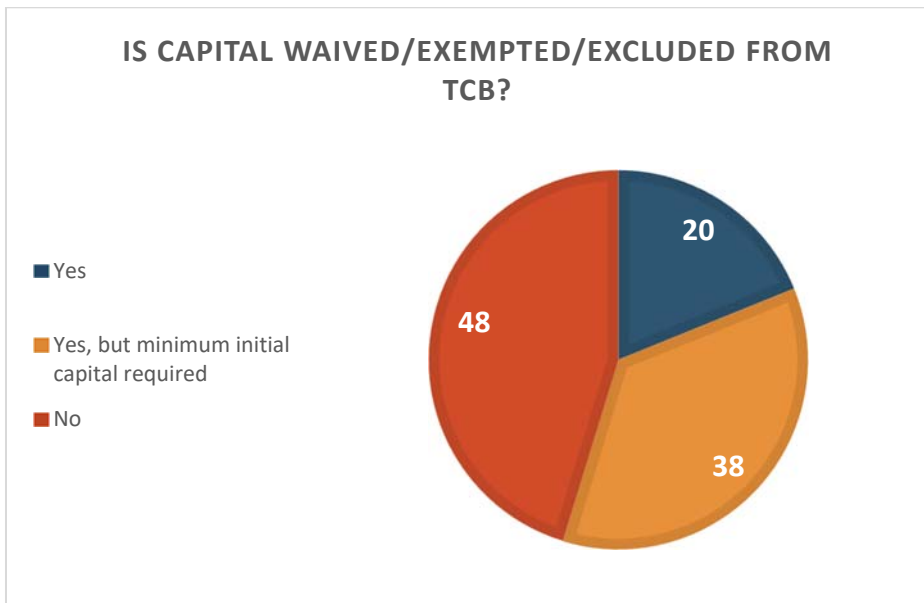
\* With respect to those MSs providing for the subsidiary-like approach and the simplified treatment, the table only shows the responses related to the subsidiary-like approach. Exemptions/waivers contemplated as part of the simplified treatment are summarised in paragraphs 17 and 18 above. It should also be noted that CRR-like requirements may present national specificities.

\*\* In accordance with the CRR2, leverage requirements will only be applicable from 28 June 2021 onward.

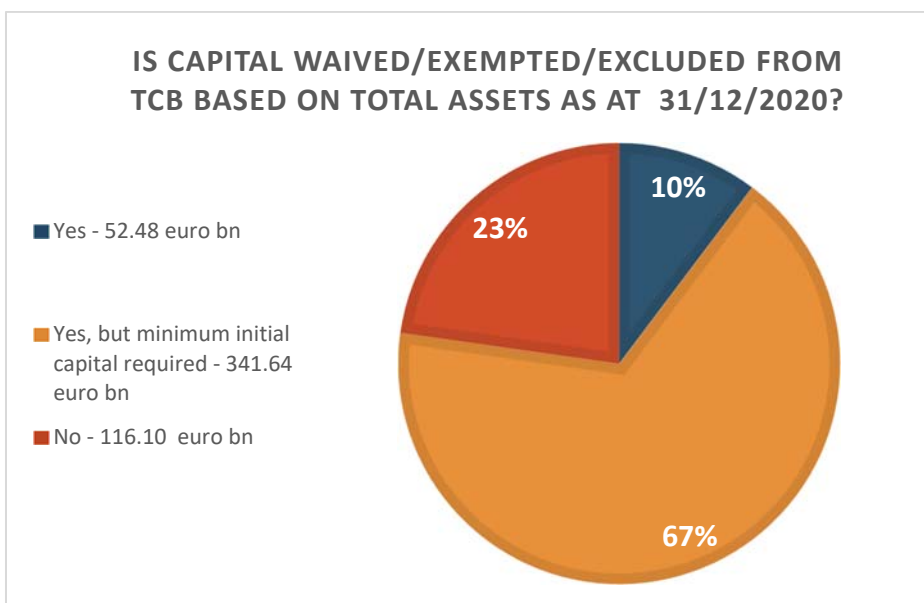
\*\*\*EE: no specific requirement, overall assessment that the TCB is fit for purpose to carry out the envisaged activities

22. Figure 7 below, based on data collected as at 31 December 2020, provides an overview of the implementation in practice of the national regulatory approaches described in Section 2.1.1. with regard to capital requirements. Even though the majority of CAs stated that they applied the subsidiary-like approach as a default solution, the data show that **the majority of TCBs are subject to no capital requirement or to a minimum initial capital.**

**Figure 7. Capital waived/exempted/excluded in relation to the number of TCBs (data as at 31 December 2020)**



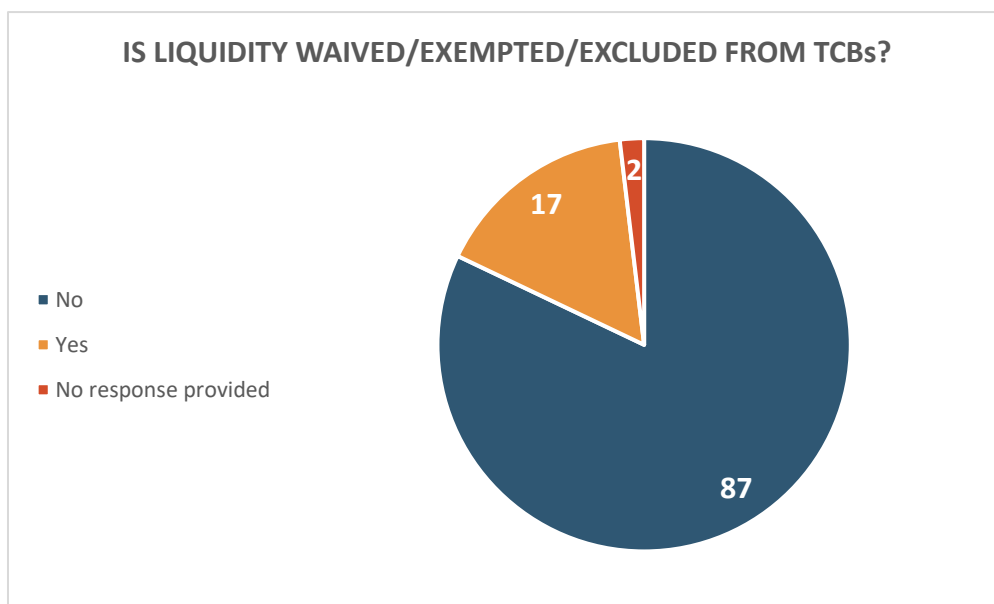
**Figure 8. Capital waived/exempted/excluded based on TCBs’ total assets in EUR bn (data as at 31 December 2020)<sup>6</sup>**



<sup>6</sup> Total asset amounts refer to 105 out of 106 TCBs.

23. Figure 9, which is based on data collected as at 31 December 2020, provides an overview of the implementation in practice of the national regulatory approaches described in Section 2.1.1. with regard to liquidity requirements. The large majority (79%) of TCBs are subject to liquidity requirements, whereas only 16% of the total TCBs are exempted from such requirements. With regard to TCBs subject to liquidity requirements, 2 CAs reported that in respect of 18 TCBs, national rather than EU liquidity requirements are applied. Other CAs did not specify which requirements, EU or national, are applied.<sup>7</sup>

**Figure 9. Liquidity waived/exempted/excluded for TCBs expressed as a percentage of total number of TCBs based on data as at 31 December 2020**



24. As illustrated and summarised above, the differences in conditions for the application of the simplified treatment and the type and number of prudential requirements that are exempted or may be waived make the EU regulatory landscape for TCBs very heterogeneous. This multifaceted picture of the simplified treatment has to be considered in conjunction with the similarly varied composition of prudential requirements and variations depending on the TCHA in force in those MSs adopting the branch approach.
25. Overall, and as illustrated in more detail in Chapter 5, it may be concluded that TCBs headquartered in the same TC are treated differently across the EU: depending on the MS of establishment, they may be subject to the branch-specific approach, the simplified treatment or to the subsidiary-like approach. This may give rise to arbitrage opportunities

<sup>7</sup> For the purposes of this chart, 18 TCBs have been included in the category response 'NO', i.e. TCBs for which the CAs reported that liquidity requirements are not waived, exempted or excluded. Further analyses of national liquidity requirements would be needed to assess the content of national rules compared to the EU framework.

and call into question the single nature of the EU financial market when it comes to its uniform opening towards the global marketplace.

### **2.1.3 Reincorporation as a subsidiary**

26. A minority of CAs are entitled to require that a TCB is ‘reincorporated’ as a subsidiary. Notably, 4 CAs specified that such power is generally at the CA’s discretion (NL) or that it may be exercised where certain conditions are met (DK, HR and MT). In the latter case, such conditions may relate to: (a) size and scope of activity of the TCB (DK); (b) amount of assets and contingent liabilities (HR); (c) amount of deposits collected from local depositors (MT).

## **2.2 Funding, macroprudential measures and disclosure requirements**

### **2.2.1 Capital requirements**

27. 16 CAs (AT, BE, CZ, DE, DK, ES, FI, FR, GR, HR, IT, LU, LT, PL, PT and RO) reported that they apply CRR-like Pillar 1 capital requirements. ES specified that the LE regime is slightly different for TCBs. 11 CAs (AT, CZ, FI, FR, GR, HR, IT, LT, LU, PT and RO) also reported that they apply CRR-like Pillar 2 capital requirements. Consistently, some CAs (BE, DE, ES, FI, FR and GR) reported that they do not rely on the TCCI capital position to determine the TCB capital requirements. Some of them also drew attention to the difficulties in determining CRR/CRD-like capital requirements for TCBs, since they are not separate legal entities from the TCCI. It is worth noting that some of the CAs referred to in this paragraph also provide for the application of the simplified treatment, which entails the exemption or waiver from capital requirements for TCBs subject to that approach. Therefore, the capital treatment of TCBs in practice depends on the regulatory approach which is applied to the TC/TCB in each specific case.
28. Conversely, with regard to the branch-specific approach and the simplified treatment, CAs clarified that capital requirements are not applied since the TCB is not a separate legal entity and may not have capital separate from that of the TCCI. CAs adopting the branch-specific approach (BG, CY, IE, MT, NL and SE) reported that they do not impose capital requirements on the TCB but rely (or collect information) on the TCCI’s capital position, overall financial soundness, TCHA supervision and close supervisory cooperation. Under the simplified treatment, CAs generally demand some form of capital requirement at branch level which is usually equal to a minimum initial capital amount. This amount, however, varies across the different MS.

### 2.2.2 Leverage

29. With regard to leverage, several respondents following the subsidiary approach (CZ<sup>8</sup>, ES, FI, FR, IT, LT, LU<sup>9</sup>, PL, RO, SK and SI) reported the application in principle of the leverage requirement for TCBs and that they will apply this requirement when it enters into force on 28 June 2021. With regard to the branch-specific approach and the simplified treatment, CAs clarified that this requirement is not applicable in practice (and is not applied), since the TCB does not have capital separate from that of the TCCI.

### 2.2.3 Liquidity requirements

30. The large majority of CAs (20: AT, BE, BG, CZ, DE, DK, ES, FI, FR, GR, HR, HU, IE, IT, LT, LU, MT, NL, PT and RO) reported that they apply CRR-like LCR Pillar 1 liquidity requirements. However, a closer look at the specific approaches applied across the EU shows that whilst liquidity requirements are generally imposed in the context of the subsidiary-like approach, practices are more heterogeneous within the branch-specific approach and the simplified treatment. As a consequence, liquidity regulation of TCBs is quite varied across MSs.
31. With regard to the branch-specific approach, it is worth noting that whilst IE requires LCR requirements to be maintained at all times, CY and LV specified that, although TCBs are not subject to CRR-like liquidity requirements, they are required to comply with liquidity requirements set out in national supervisory regulations. As regards the simplified treatment, only two MSs (GR and IT) always apply liquidity exemptions; FR subjects this specific exemption to the condition of reciprocity and DE, ES and LU do not envisage the application of liquidity exemptions.
32. 12 CAs (AT, CZ, ES, FI, FR, GR, HR, IT, PT, RO, LT and LU) reported that they provide for the application of CRR-like LCR Pillar 2 liquidity requirements. Where they are envisaged, these requirements are typically the same as those applicable to credit institutions; exemptions, however, are applied.

### 2.2.4 Macroprudential measures

33. 9 CAs (CY, CZ, ES, FR, GR, HR, HU, LT and RO) responded that they apply or envisage applying domestic macroprudential measure to TCBs. For example, these measures may concern the application of:
- various types of ratios, such as the loan to value and debt service to income ratios, the foreign funding adequacy ratio and the foreign exchange coverage ratio;
  - minimum reserves; and
  - buffers, e.g. countercyclical buffer and structural systemic risk buffer.

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<sup>8</sup> CZ: the leverage requirements are applied regardless of the business model or size of the TCCI or TCB.

<sup>9</sup> So far, absent the application of a leverage requirement, TCBs are required to submit reporting requirements on leverage.

34. 5 CAs (FR, GR, LT, HR and RO) indicated that, under their legal framework, macroprudential measures applied by countries where the TCCI is established might be reciprocated. The main reason for taking this action is usually preserving financial stability.

### 2.2.5 Pillar 3 requirements

35. 11 CAs (AT, BG, CZ, FR, GR, HR, HU, LT, LU, PT and RO) envisage the application of Pillar 3 requirements to TCBs. 2 CAs reported that the requirement is exempted when the simplified treatment is applied and one CA (PT) clarified that this requirement was never applied when TCBs were established in its jurisdiction.

## 2.3 Internal governance and control framework

36. The internal governance and control framework is understood as those arrangements comprising (i) a clear organisational structure with well defined, transparent and consistent lines of responsibility; (ii) effective processes to identify, manage, monitor and report the risks to which the entity will be exposed; and (iii) adequate internal control mechanisms, including sound administrative and accounting procedures, remuneration policies and practices consistent with sound and prudent risk management.
37. As a general observation, and unlike other prudential requirements, national approaches towards internal governance are less dependent on the specific approach applied – subsidiary-like, branch-specific or simplified – and less heterogeneous. Based on the responses received, there is convergence with regard to branch-effective direction requirements and the extent to which TCBs are subject to AML policies and control requirements, whereas divergences exist as regards the delegation of internal control functions to the TCCI in terms of prior conditions and the extent to which outsourcing is possible.

### 2.3.1 TCB management and/or key function holders

38. Almost all CAs reported that TCBs are subject (or are envisaged to be subject) to requirements with respect to branch management and/or key function holders.
39. In terms of the effective direction and organisational structure, 17 CAs (AT, BE, DE, ES, FR, GR, HR, IE, IT, LT, LU, LV, NL, PL, PT, RO and SE) indicated that national law or regulation set out requirements for the day-to-day management of the TCB. In particular, 9 CAs (DE, ES, GR, HR, LU, NL, PL, PT and RO) require at least two branch managers to be located in the jurisdiction. In addition, GR requires the TCB key function holders (CRO, internal audit officer and compliance officer) to be domiciled in GR. IE requires that the branch manager does not hold any other positions within the TCCI group, is responsible for overseeing the TCB organisational structure and ensures that the internal control framework is adequate and effective. In light of the risk-based approach, IE may also require the TCB to set up a management committee and a risk committee.



40. 16 CAs (BE<sup>10</sup>, BG, CY, CZ, DE, DK, ES, FR, GR, IE, IT, LU, MT, NL, PL and PT) require the branch manager(s) to be subject to the same suitability requirements applicable to credit institutions.
41. Only 8 CAs provided indications as to the responsibility for the TCB's strategy: 3 CAs (DE, ES and IT) reported that this may be allocated to the branch manager(s) or the board of directors of the TCCI (LU).

### 2.3.2 Delegation of functions to the TCCI

42. Broadly speaking, respondents allow TCBs to delegate critical functions to the TCCI; CAs diverge as to whether such delegation is subject to regulatory requirements and limits.
43. 16 CAs (AT, BE, CZ, DE, FR, GR, HR, IT, LT, LU, NL, PL, PT, RO, SE and SI) reported that they subject the delegation of critical functions<sup>11</sup> by the TCB to the headquarters to regulatory requirements, which are usually similar to those applicable to CRR/CRD credit institutions, notably notification to the CA, organisational safeguards, maintenance of responsibility etc... DE and GR specified that such requirements are applied on a case-by-case basis. At least 2 CAs (LU and SE) clarified that TCBs are only allowed to outsource the tasks and not the critical functions to the headquarters.
44. 7 CAs (BG, CY, ES, HU, IE, MT and SK) mostly applying the branch-specific approach, reported that they do not impose specific requirements. ES explained that it considers the services rendered between the TCB and the TCCI from the perspective of structure and organisation.
45. 10 CAs (BE, CZ, DE, FR, HR, LU, NL, PL, PT and RO) indicated that they also impose regulatory requirements on the delegation of non-critical functions by the TCB to the headquarters.

### 2.3.3 Risk management, risk control, internal audit functions and ICT security and risk management

46. The survey asked CAs whether the risk management, risk control and internal audit functions are subject to specific requirements when these functions are required to be present at the TCB.
47. The majority of CAs reported that they apply the same requirements applicable to credit institutions. DE specified, however, that such requirements apply on a case-by-case basis. In addition, some CAs reported the application of specific requirements and organisational safeguards irrespective of the specific approach applied to the TCB:
  - o GR allows for the tasks to be delegated to the TCCI, but requires that the CRO, the internal auditor, the compliance officer and the AML compliance officer be domiciled in Greece and be subject to F&P assessment;

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<sup>10</sup> BE: senior managers and compliance function.

<sup>11</sup> In line with the EBA Guidelines on outsourcing, 'critical functions' refer to the outsourcing of functions in accordance with Section 4 of those Guidelines.

- FR requires an engagement letter from the TCCI to confirm the commitment to respect all requirements on organisation and internal controls, remuneration practices, risk policies and, where appropriate, specialised committees;
- IT and MT consider the risk management, risk control and internal audit functions as critical functions, making the delegation of their tasks to headquarters subject to notification and non-opposition by the CA<sup>12</sup>. Similarly, HR prohibits the complete outsourcing of the control functions;
- LU does not permit the delegation of the compliance function or the risk management function to headquarters, but it may allow small TCBs to delegate the internal audit function to headquarters;
- IE requires the TCB to appoint a CRO with distinct responsibility for the risk management function; a branch management committee must be set up in order to understand the risks to which the entity is exposed and to establish a documented risk appetite for the TCB. Furthermore, while the TCB is not required to have an internal audit function present within the TCB, the latter is required to be subject to an annual audit by the group internal audit function;
- CY specified that risk management, risk control and internal audit functions are subject to regulatory requirements but they do not need to be present in the TCB, also in view of the low significance of the TCBs' operations to the national banking system.
- Lastly, as regards ICT security and risk management, 12 CAs (BE, CY, CZ, DE, FR, IT, LT, LU, LV, NL, PL and PT) reported that TCBs are subject to regulatory requirements/assessment as to their ICT systems, including in respect of cyber security risks. In most cases, these requirements are the same as those set out for CRR/CRD credit institutions. CY specified that such regulation is applied to the extent possible given that the function is often managed from the headquarters. For similar reasons ES, HU, IE and MT reported that they do not apply any requirements in this respect. DE clarified that such regulations are applied on a case-by-case basis.

### 2.3.4 Booking of exposures and positions

48. The survey asked whether CAs apply any requirements with respect to booking of exposures/positions associated with TCBs' activities (i.e. any product sold by the TCB, e.g. a loan issued by the branch) and to managing such exposures/positions within the branch.
49. 12 CAs (CZ, DE, ES, FR, HR, IE, IT, LU, NL, PL, LT and LV) reported that they issue requirements regarding booking of exposures/positions associated with TCBs' activities (i.e. products sold by the TCB). In this regard:
  - IT specified that there are no specific requirements with reference to booking, but the management of positions booked in the TCB has to be compliant with the general requirements applicable to the management of credit risk.
  - LU reported that TCBs are considered separate operational units, which have to book transactions separately from the head office, perform operations in their own

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<sup>12</sup> IT clarified that this procedure does not apply in cases of simplified treatment.

name and draw up separate and audited annual accounts (although they have no obligation to publish them).

50. Furthermore, 20 CAs (AT, BE, BG, DK, EE, ES, FI, FR, GR, HR, IE, IT, LT, LU, LV, MT, NL, NO, PT and SK) generally reported that TCBs are not allowed to operate as mere booking desks for their headquarters (i.e. the TCB cannot perform all transactions back to back). These CAs indicated that TCBs have to set up an internal governance structure which is adequate for the type of activities that are carried out, and to apply the requirements in force for credit institutions (BE). Some CAs indicated the specific requirements applicable to TCBs, focusing in particular on governance risk control functions, and compliance<sup>13</sup>.
51. Conversely CY, CZ, DE, PL and RO allow TCBs to operate as mere booking desks. DE specified that, even if this is theoretically possible, in practice it is subject to limitations relating to the application of the subsidiary approach. CY clarified that in practice operating as mere bookings desks is not within the business model of TCBs currently established within that MS.

## 2.4 Comparative overview of the regulation and supervision of branches of foreign banks by third countries

### 2.4.1 General overview

52. The treatment of branches of foreign banks has raised renewed interest in the context of the FSB analysis of the cross-border consistencies and global financial stability implications of structural banking reform measures enacted after the financial crisis started in 2008<sup>14</sup>.
53. Within the same stream of work, in 2015 the OECD conducted a survey on the conditions for establishing subsidiaries and branches in the provision of banking services by non-resident institutions, the results of which are illustrated in a Report<sup>15</sup>. The Report indicates that a range of measures have been introduced in the aftermath of the crisis, including measures that affect branches of foreign banks in respect of subsidiaries of the same foreign banks.

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<sup>13</sup> GR: the authorisation governance requirements include, among others, the suitability assessment of the key function holders, the compliance officer, the AML officer; the provision of information by the TCHA on the internal control and risk management systems; the submission by the TCCI of any additional data and information requested by the CA in order to form a clear picture of its activity and the persons that will effectively direct the branch's business (including, but not limited to, data and information on its financial robustness, capital adequacy for credit risk, operational risk and market risk, compliance with caps on large exposures, adequacy of internal control systems, fit and proper assessment of the persons referred to above). ES: regulatory compliance unit, an internal audit function and a risk management unit; appropriate and solid procedures; evaluating and controlling all relevant risks; establishing risk assumption policies and adequate internal procedures; adequate procedures that allow supervisors access to pertinent data and information. IT: internal control, remuneration, business continuity,, liquidity management. LU: risk management, compliance, AML/CTF, remuneration, ICT). LT: statute rules, managers, business plan, management and organisational structure, accounting system, internal control system, safeguards, premises, asset insurance must ensure the safe and reliable operation of the branch and comply with the legislation governing it.

<sup>14</sup> Financial Stability Board, Structural Banking Reforms. Cross-border consistencies and global financial stability implications. *Report to G20 Leaders for the November 2014 Summit*, of 27 October 2014.

<sup>15</sup> OECD, The conditions for establishment of subsidiaries and branches in the provision of banking services by non-resident institutions, (January 2017).

**Text box: excerpts from the Executive summary of the OECD, 2017 Report**

‘There are some countries which do not permit establishment of branches by non-resident banks or only after incorporation. Others do not permit branches of non-resident banks to operate in some banking services, mostly relevant to retail banking and/or deposit taking. There have been transitions from branches to subsidiaries in some jurisdictions and the reverse transition from subsidiaries to branches has also occurred, although sometimes only involving domestic institutions.’

In terms of the possibility of requiring a non-resident bank to establish a subsidiary (or financial holding company) instead of a branch, in most cases the supervisory authority has the discretion to require this on a case-by-case basis and when certain conditions/thresholds are met.

‘The survey results suggest that there has been some tightening since 2008 in regard to the conditions for non-resident banks to branch. Many of the higher threshold requirements are also related to the possible systemic impact in terms of the size and complexity of the banking institution. [...] Most jurisdictions indicate that financial or prudential requirements are imposed on branches of nonresident banks. A key issue that is being increasingly monitored since the crisis concerns liquidity and many financial requirements identified are liquidity related, some of which have been introduced since the crisis.’

‘While financial requirements on branches have been common, governance requirements on branches are less well known, but are imposed by most jurisdictions on branches of non-resident banks and have increased in recent years since the crisis. The ‘fit and proper tests’ are the most common (indeed, all countries that have governance requirements on branches apply a fit and proper test) but many also require a risk management and/or audit function in the branch. Half of the jurisdictions require the establishment of a board of directors/management board in branches, and some require the establishment of board committees.

While branching by non-resident banks remains a widely available option, a number of countries have applied certain safeguards to ensure the safety of depositors or to prevent deposit insurance from being activated for a branch. In particular, the financial and governance requirements that are now being imposed, while the same or equivalent to domestic banks, may limit the attractiveness of branching going forward.’

#### 2.4.2 The US approach

54. In the same post-crisis context, the US has adopted regulatory reforms of foreign banks operating in the country with a view to enhancing financing stability and ensuring a level playing field between domestic and foreign players operating in the US.
55. Notably, foreign bank organisations (FBOs) with US non-branch assets of USD 50 bn or more are required to hold their US subsidiaries through a US intermediate holding company (IHC), which is subject to capital, capital planning, liquidity and stress testing requirements similar to those applicable to US bank holding companies (BHCs). FBOs with combined US

assets (including US branches) of USD 50 bn or more will be subject to liquidity and risk management requirements in the United States.

56. It is worth noting that this regime does not require all US activity to be conducted through US incorporated subsidiaries – foreign banks may still operate branches and agencies in the US. Nor do the reforms set a specific limit on the amount a foreign bank’s US branches or subsidiaries can lend to their parent or other non-US affiliates<sup>16</sup>. The text box below summarises the main requirements applicable to federal branches of FBOs.

**Text box – The main requirements applicable to federal branches of foreign banks in the US**

Federal branches of foreign banks are authorised by the Office of the Comptroller of the Currency (OCC) and by the Federal Reserve System (FRB). Before the authorisation process of the OCC starts, the Board of Governors of the Federal Reserve Board (FRB) has to conduct a Comprehensive Consolidated Supervision (CCS). The aim of the CCS is to establish whether the supervisor of the foreign bank has enough information available on the activities of the foreign bank in order to be able to access and to supervise the activities of that bank (and its foreign branch in the US).

In order to issue a licence to a federal branch, the OCC runs a process of assessing different sets of criteria that need to be fulfilled (e.g. financial and managerial resources, future prospects, governance, compliance with applicable U.S. laws, the effect of the branch on competition, adequate controls to identify ML/TF).

Once the OCC issues a preliminary licence, the foreign bank may start the process to establish the branch and to set up the Capital Equivalency Deposit (CED). The establishment of a CED account with a depository bank is the precondition for a foreign bank to open business via its branch. The depository bank is approved either by the OCC (in case of a state bank) or by the FRB (in case of a state member bank). The CED assets may be used to pay appropriate claims, if necessary once the branch enters into liquidation.

The amount held in the CED should be equal to at least 5 percent<sup>17</sup> of the total liabilities<sup>18</sup> of the federal branch. Eligible assets<sup>19</sup> held in the CED account must be segregated in a safekeeping account and free of any liens. Any operations that may affect the CED account may require prior notice to the OCC.

Following the adoption of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), the responsibility for the supervision of branches has been shared between the FRB and

<sup>16</sup> FSB, Structural Banking Reforms, page 6.

<sup>17</sup> In specific cases, the threshold set by the OCC may be higher than 5 percent. State branches may be subject to different requirements.

<sup>18</sup> Liabilities include acceptances, but exclude accrued expenses, intercompany liabilities, liabilities of an international banking facility (IBF) to third parties and of a federal branch to an IBF, liabilities from repurchase agreements (on a case-by-case basis), and any amounts due to the head office.

<sup>19</sup> Eligible assets include: (i) Investment securities eligible for investment by national banks, (ii) U.S. dollar deposits payable in the United States or any other Group of 10 country, (iii) certificates of deposit, payable in the United States, and bankers’ acceptances (iv) repurchase agreements, (v) similar assets the OCC deems eligible.

the OCC. The examinations focus on risk management, operational controls, compliance and asset quality (ROCA) and on the financial conditions of the foreign bank in order to evaluate whether the foreign bank can manage and support its U.S. branch effectively.<sup>20</sup>

With regard to deposit protection, the general rule for federal branches of foreign banks in the US is that they are not insured under the Federal Deposit Insurance law.<sup>21</sup> Under the application of the International banking act, federal branches of foreign banks established after December 1991 are not allowed to accept domestic retail deposits.<sup>22</sup> This activity is reserved to banks insured under the Federal Deposit Insurance law, e.g. subsidiaries of foreign banks in the US. Deposits below USD 250,000 may be accepted only by those branches established before 1991 which are covered by the grandfathering provision, or in compliance with a specific order issued by the OCC. Otherwise, a branch may be engaged in permissible 'wholesale' deposit-taking activities or in accepting deposits below the threshold of USD 250,000 from individuals who are not US citizens or residents at the time of the initial deposit<sup>23</sup>.

### 2.4.3 The UK approach

57. The UK laid down its post-crisis approach towards non-EEA branches in a 2014 statement with a view to promoting safety and soundness and the UK's financial stability. The original 2014 Statement<sup>24</sup> was based on a positive assessment of three main factors: (i) whether the supervision of the entity in its home state is equivalent to that of the UK; (ii) the activities undertaken by the branch; and (iii) whether the UK supervisor has assurance from the home supervisor over the firm's resolution plan in a way that reduces the impact on financial stability in the UK.
58. The 2014 Statement has been subsequently reviewed in 2018 in the context of Brexit preparations and subject to a further consultation in January 2021.

<sup>20</sup> <https://www.federalreserve.gov/supervisionreg/foreign-banking-organizations.htm>  
<https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/federal-branches-agencies/index-fed-branches-agencies-supervision.html>

<sup>21</sup> See also the FDIC Final Rule on the Definition of Deposit at Foreign Branches of U.S. Banks, 10 September 2013, <https://www.fdic.gov/news/press-releases/2013/pr13081.html>

<sup>22</sup> Domestic retail deposits are understood as the acceptance of 'any initial deposit of less than the standard maximum deposit insurance amount (SMDIA)'. The SMDIA is currently USD 250 000.

<sup>23</sup> See Comptroller's Licensing Manual – Federal Branches and Agencies, OCC, September 2020, <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-federal-branches-and-agencies.html>.

<sup>24</sup> Supervisory Statement (SS 10/14), available at <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2014/ss1014>

**Text box – Main elements of the PRA Statement on branches of foreign banks**

The Prudential Regulation Authority (PRA) on authorisation and supervision of branches of foreign banks is set out in Supervisory Statement SS1/18<sup>25</sup>. This statement has been subject to new public consultation on 11 January 2021 by the PRA<sup>26</sup>.

The issue of whether an international bank is expected to operate in the UK in the form of a subsidiary or a branch of a foreign bank will depend on meeting the PRA's expectations for effective supervision<sup>27</sup> and the PRA's considerations for branch authorisation<sup>28</sup>.

Expectations for effective supervision include supervisory equivalence, supervisory cooperation, arrangements for resolution and specific expectations connected with the planned business model (retail, wholesale), thresholds for retail deposits, core deposits, assets etc. In the process of the evaluation, the PRA will consider information sharing and supervisory cooperation arrangements, the group's capacity and willingness to support the firm, governance and risk management, booking arrangements, operational resilience and the group resolution strategy.

Restrictions on retail deposit-taking regarding the counterparty (retail, small companies), the total potential liability of the Financial Services Compensation Scheme (FSCS) in relation to covered deposits and the number of customers of the branch. In general, the *'PRA expects new branches of international banks operating in the UK to focus primarily on wholesale banking activities'*.

With regard to wholesale banking activities, the PRA will determine the systemic importance of a branch by taking into account a GBP 15 billion total gross assets threshold in combination with the overall complexity and interconnectedness of the business undertaken by the branch, including where a branch provides significant operational services or is otherwise interconnected to a systemically important UK bank. Further aspects will also include the level of provision of critical functions the branch plans to undertake.

Should the PRA arrive at a conclusion that it would not be in a position to effectively supervise a branch, the implementation of further mitigants could be required, or it would be expected that for the reasons of effective supervision a subsidiary should be established.

<sup>25</sup> PRA – Supervisory Statement (SS1/18) - International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision, March 2018, [PRA Supervisory Statement 1/18 'International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision'](https://www.bankofengland.co.uk/prudential-regulation/publication/2018/march/international-banks-branch-and-subsi-dary-supervision/) ([bankofengland.co.uk](https://www.bankofengland.co.uk))

<sup>26</sup> PRA – CP2/21 – International banks: The PRA's approach to branch and subsidiary supervision, January 2021, [https://www.bankofengland.co.uk/prudential-regulation/publication/2021/january/international-banks-branch-and-subsi-dary-supervision](https://www.bankofengland.co.uk/prudential-regulation/publication/2021/january/international-banks-branch-and-subsi-dary-supervision/)

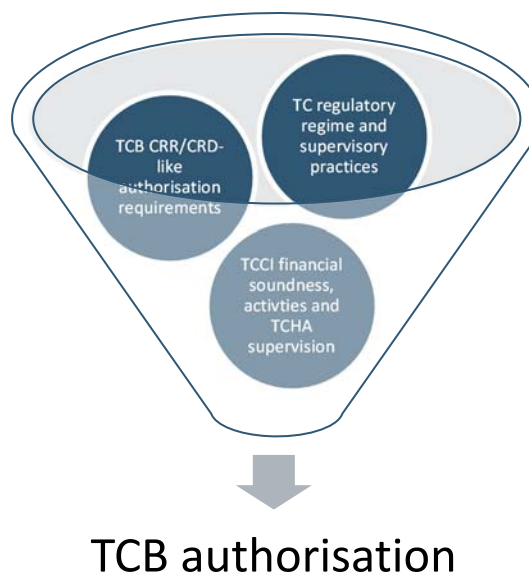
<sup>27</sup> See figure 1 on page 8 of the draft Supervisory Statement: The PRA's approach to branch and subsidiary supervision that is annexed to the PRA – CP2/21, January 2021.

<sup>28</sup> Ibid. See Figure 2 on page 29.

## 3. Market access: authorisation of TCBs

### 3.1 Introduction

59. In all MSs, the establishment of a TCB by a TCCI is subject to a prior authorisation issued by the CA in accordance with national laws and regulations. Based on current national laws and practices, authorisation requirements and assessment criteria can be grouped into three categories in relation to the: a) proposed TCB; b) applicant TCCI and the specific supervision exercised by the TCHA, and c) TC regulatory regime, supervisory practices and cooperation. Significant differences exist, however, also for purposes of authorisation, depending on the application of the subsidiary-like approach, the branch-specific approach or simplified treatment.
60. The authorisation requirements, assessment criteria and assessment processes relating to the TCB envisaged by national law largely replicate those commonly applied to grant authorisation as a credit institution under the CRR/CRD. Notably, they concern the programme of operations, organisational structure, capital and liquidity (unless these requirements are not applicable under the specific national law and practice) and effective direction.
61. Authorisation requirements and/or assessment criteria relating to the TCCI concern its financial soundness, areas of activity and the effectiveness of the supervision exercised by the TCHA.

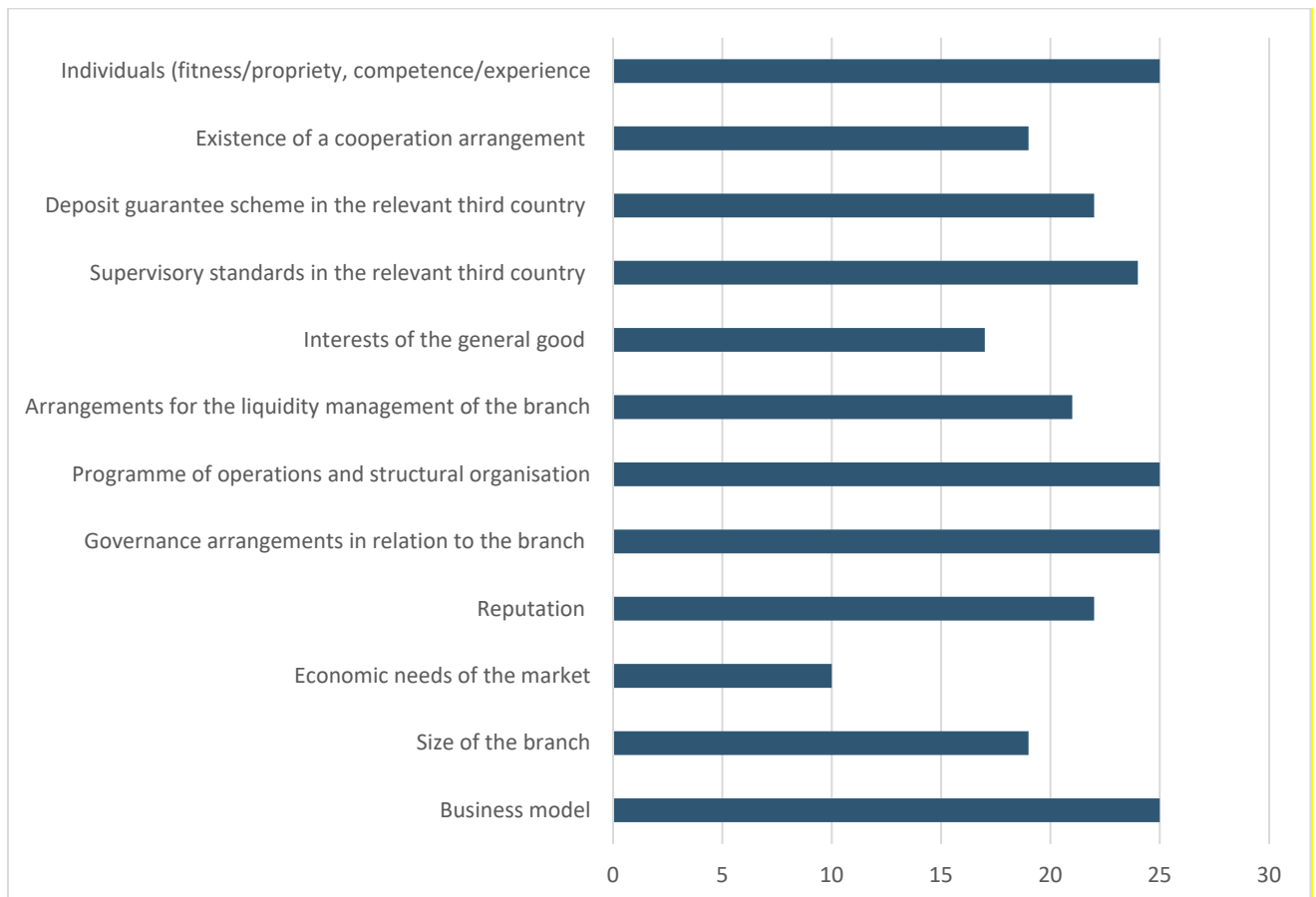




62. Authorisation requirements and/or assessment criteria relating to the TC concern the quality of the regulatory regime and of supervisory practices, the effectiveness of cooperation with the TCHA and reciprocity. By reciprocity, for the purposes of this Report, it is meant the application by the TC vis-à-vis outgoing branches of credit institutions authorised under the CRR/CRD of reciprocal conditions of access and/or of regulatory treatment. CAs have reported that reciprocity may be established by law (IT) or by the CA on a case-by-case assessment, exchanges and dialogue with the corresponding TCHA (FR, ES and IE).

### 3.2 CRR/CRD-like authorisation requirements in relation to the TCB

63. Regardless of the approach applied – subsidiary-like, branch-specific or simplified treatment – a large majority of MSs converge in the application of a common core of CRR/CRD-like authorisation requirements relating to the TCB: the programme of operations, internal governance arrangements, effective direction and membership of a DGS in the event of deposit-taking activities. Significantly, the most relevant divergences relate to solvency and liquidity requirements. The assessment of the TCCI's reputation, i.e. relating to the members of its management body and the shareholders with qualifying holdings, is often included within the authorisation requirements. Depending on each MS, the fulfilment of such a requirement may be assessed by the CA via the information submitted by the TCCI or in consultation and cooperation with the TCHA. In addition, a large majority of MSs consider the quality of the third country regulatory regime and supervisory practices as a significant element to be assessed, irrespective of whether equivalence of the regulatory regime and supervisory practices is strictly included within the authorisation requirements. Figure 10 summarises the most commonly used criteria for the purpose of granting authorisation as a TCB.

**Figure 10. Most common authorisation assessment criteria (number of CAs)**

64. Notwithstanding the existence of a common core of CRR/CRD-like authorisation requirements, several CAs also apply different subsets of requirements, making the regulatory playing field quite varied across the EU.
65. With regard to governance arrangements, such requirements also include outsourcing arrangements, AML/CFT arrangements and compliance with national laws on data and consumer protection.
66. With regard to the analysis of the business plan, some CAs indicated that several parameters are taken into account, including the leverage ratio, LE limit and ML/TF risk. Some CAs reported that they expressly require the opening and maintenance of separate accounting from the TCCI (CZ, GR, PT and PL), and in at least two cases (PT and PL) in the national language of the MS where the TCB will be established<sup>29</sup>.

<sup>29</sup> For further information on the national practices regarding the accounting regime applicable to TCBs, see Chapter 5, paragraph on reporting.

### 3.2.1 Capital at authorisation: subsidiary-like approach

67. Based on the survey results, several CAs (AT, BE, CZ, ES, FI, FR, GR, IT, LU, LV, PT and PL), require the TCB to hold capital requirements, determined on the basis of local risks pertaining to the TCB and held/booked within the TCB jurisdiction (BE, CZ, ES, FI, FR, GR, LU and PT).
68. The methodology to determine the capital reflects that applied to credit institutions authorised under the national law of the concerned MS. Specifically, this encompasses: a) the initial capital, which is the fixed amount set out in national law that needs to be paid up at the moment of the authorisation, and b) additional own fund requirements which are determined based on the TCB's business plan, having regard to the envisaged types of activities and risk profile (ES, FR, IT, FI and LU). The amount of the initial capital required by TCBs is usually the same as that applicable to credit institutions and similarly to the case of credit institutions, it varies greatly across the EU. Notably, it ranges from EUR 5 million to EUR 18.4 million<sup>30</sup>. In addition, FI sets out a minimum threshold of EUR 5 million to cover the TCB's activity. In terms of asset quality, 2 CAs (DK and ES) have specified that they require liquid assets to cover exposure in the jurisdiction.
69. The TCCI's capital position is therefore not relied upon (CZ, FI, ES, FR and IT) as part of the methodology to determine the TCB's capital amount. This is without prejudice to the fact that the TCCI's financial soundness is broadly considered a general criterion for granting authorisation. Two CAs (ES and LU) have clarified that the overall capital position of the TCCI is taken into account to determine the level of comfort of the TCB's capital demand, having regard to its business plan. For this purpose, LU has reported that it interacts and consults with the TCHA and takes into account the results of such exchanges to the extent necessary.
70. A special hybrid approach is applied in LV, where no capital endowment is required provided two conditions are met: (i) the TCCI's minimum initial capital meets the initial capital required in LV for granting authorisation to credit institutions (i.e. EUR 5 million), and (ii) the TCCI has operated for at least three financial years.

### 3.2.2 No capital requirement: branch approach

71. In line with the nature of TCBs as non-separate legal entities from the TCCI, 9 CAs (BG, CY, EE, IE, LT, MT, SE, NL and NO) indicated that they do not impose capital requirements but instead rely(or collect information) on the TCCI's capitalisation, as well as on the TC's regulatory regime and effective supervision by the TCHA. In particular, one CA underscored that for granting authorisation as a TCB, it has to be satisfied with the TCCI's capital position, financial soundness and inclusion within the TCHA's consolidated supervision.

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<sup>30</sup> EUR 5 million: AT, DE, FI and HR; EUR 6.2 million: BE and GR; EUR 9 million (GR: up to EUR 18 million if the TCB intends to establish more than four business units); IT: EUR 10 million; LU: EUR 8.7 million; ES: EUR 18 million; CZ: EUR 18.4 million.

### 3.2.3 Simplified treatment: exemption/waiver of capital requirement

72. Respondents applying a simplified treatment reported that they exempt or waive, as the case may be, capital requirements for the TCB. All CAs (envisaging the simplified treatment) but one reported that they apply such an exemption/waiver at authorisation; LU reported that it grants the waiver at a later point in time in accordance with the results of risk-based supervision. CAs also clarified that even in the event of applying the capital exemption/waiver, they still require the TCB to hold a minimum initial capital. As observed above, conceptually this is similar to the minimum initial capital requirement set out in Article 12 CRD, as an authorisation requirement for credit institutions, and presents similar variations in the amount across the EU.

### 3.2.4 Membership of the DGS

73. As shown in figure 10, the large majority of CAs reported that they take into account the TC DGS for purposes of granting authorisation as a TCB. However, the result does not indicate whether TC DGS are actually considered equivalent by the CA. In accordance with Article 15 DGSD, an authorised TCB may remain a member of the TC DGS if the latter affords protection equivalent to that provided by EU law. Where it is assessed that the protection is not equivalent, the CA has to require the TCB to become a member of the local DGS.
74. It worth noting that, acknowledging that the most common practice so far for TCBs established in the EU is to require them to become members of an EU DGS, following a negative equivalence assessment of the TC DGS or the absence of such an assessment, the EBA Opinion on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes recommends a reverse approach. It takes the view that membership of the local DGS should be the default solution and that membership of a third country DGS could only be maintained subject to assessment of equivalence with the DGS framework and upon meeting certain conditions (recommendation (viii))<sup>31</sup>.

### 3.2.5 Reputation and financial soundness of the TCCI

75. In addition to the CRR/CRD-like authorisation requirements illustrated above, national laws and regulations also envisage assessment criteria or requirements pertaining to the TCCI, notably relating to its reputation (22 CAs) and financial soundness.
76. As a general observation, the TCCI's financial soundness is one of the most relevant assessment criteria in several MSs either directly or indirectly, taking into consideration the protection of depositors and investors and adverse effects on financial stability. Consistent with this perspective, and with regard to the effective, sound and prudent management of the applicant TCB, a lack of financial soundness on the part of the TCCI is considered –

<sup>31</sup> EBA Op-2019-10 of 8 August 2019 on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes, recommendation (viii), page 8, available together with the Report at <https://eba.europa.eu/sites/default/documents/files/documents/10180/2622242/324e89ec-3523-4c5b-bd4f-e415367212bb/EBA%20Opinion%20on%20the%20eligibility%20of%20deposits%20coverage%20level%20and%20cooperation%20between%20DGSs.pdf?retry=1>

directly or indirectly – by several CAs as grounds for refusing authorisation as a TCB (BE, CZ, ES, HR, LU, LV, PL and SE). Significantly, one CA (PL) requires from the TCCI a letter of comfort that it will satisfy all claims from third parties incurred by the TCB.

77. The majority of CAs also reported that they also require the TCHA’s express consent (or non-objection as the case may be) to the establishment of the TCB (AT, BG, CY, DE, EE, ES, FR, IE, GR, IT, LU, LV, RO, SE and SK) in the form of a good standing letter (IT). One CA has specified that it require this from the TCCI.

### 3.2.6 Other assessment criteria

78. Whilst 9 CAs (AT, BE, EE, FI, HU, IE, LT, LV and SI) reported that they take into account the economic needs of the market, they clarified that they understood the question as referring to financial stability and to the protection of depositors in the context of the assessment for granting authorisation to a TCB.
79. 24 CAs reported that they take into account the quality of the TC’s supervisory standards, and stated that they usually assess the effectiveness of the TCHA’s supervision and the absence of obstacles to the effective supervision of the prospective TCB, including the transparency of close links (CZ, ES, FR and LV).
80. 17 respondents (BE, CZ, EE, ES, FI, FR, HU, IE, LT, LU, LV, MT, NL, PT, SK, NO and SI) reported that they take into account the ‘interests of the general good’<sup>32</sup>. However, only a few MSs (BE, EE, LU and LV) have indicated that they have a specific definition for this criterion; one CA (LV) indicated that it is a general description of the legal framework and operational practices to be followed by the TCB (and other non-EU entities) to operate within the MS. Reference to the need for the TCB to respect local laws on data protection and consumer protection has also been made by some CAs.
81. Among other requirements, BE and PT reported that they consider the existence of a ‘double tax treaty’ in accordance with Article 26 of the OECD ‘Model Treaty’ with the third country concerned.

## 3.3 AML/CFT authorisation requirements

82. TCBs are ‘obliged entities’ under national AML/CFT rules in all Member States. Respondents stated that the same AML/CFT laws and requirements applied to TCBs as they did to other credit institutions in the same jurisdiction. TCBs are also obliged to report suspicious transactions in the EU MS in which they are established.
83. Most respondents indicated that there were no specific AML/CFT requirements that applicants had to fulfil as a pre-condition for authorisation as a TCB. Specific preconditions appeared to exist in a small number of Member States only and related to the adequacy of

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<sup>32</sup> For a summary of the requirements imposed by EU host authorities in the interest of the general good in the context of intra-EU establishment of branches, see EBA Report on potential impediments to the provision cross-border of banking and payment services, of 29 October 2019, paragraph 34, page 18, available at <https://eba.europa.eu/eba-calls-european-commission-take-action-facilitate-scaling-cross-border-activity>.

the TC's AML/CFT regulation, cooperation between the CA and the third country's competent authorities and the adequacy of the AML/CFT internal control mechanism of the TCB. In one MS, the CA could impose specific conditions on an applicant from a high ML/TF risk third country that had been identified by the European Commission as presenting 'strategic deficiencies' in its national AML/CFT regime.

84. Most CAs indicated that they considered ML/TF risk when assessing applications for authorisation as a TCB, though the extent to which this was required or implemented appeared to vary in practice. In spite of this, only 21 CAs stated that it was possible within the existing legal or regulatory framework to refuse authorisation of a TCB on the grounds that the branch will expose the MS to an increased ML/TF risk. Respondents suggested that the refusal to grant authorisation on ML/TF risk grounds would be taken on a case-by-case basis, taking into account information such as the level of ML/TF risk associated with the TC, as well as ML/TF risks arising from individuals involved in the management of the TCB, the TCB's business model, and governance arrangements including AML/CFT systems and controls. Some CAs also considered ML/TF risks arising from the ownership structure of the TCCI or other aspects such as the effectiveness of the TC AML/CFT regime or the adequacy of AML/CFT supervision in the respective TC. Respondents indicated that assessments of a third country's AML/CFT regime by the Financial Action Task Force and the European Commission were useful indicators in this regard.

### 3.4 TC regulatory regime, supervisory practices, cooperation and reciprocity

85. In a large majority of MSs, authorisation requirements/assessment criteria include the equivalence of the TC regulatory regime and supervisory practices, the effectiveness of cooperation with the TCHA and reciprocity. The consequences of the non-fulfilment of such factors, however, vary across the EU ranging from legal grounds for rejection of the authorisation, to criteria to be considered within the overall assessment, to relevant criteria for granting the simplified treatment.

#### 3.4.1 Equivalence of the TC regulatory regime and supervisory practices

86. A large majority of respondents (24: BE, BG, CY, CZ, DE, EE, FI, FR, ES, GR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SK, NO and SI) reported that they take into account within the authorisation process whether the TC regulatory regime and supervisory practices are equivalent to those applicable in the MS concerned. The majority of respondents (15) indicated that they also take into account the equivalence of the TC confidentiality regime to safely exchange information.
87. In both cases, respondents clarified that they rely on the EBA equivalence assessment of the TC regulatory and confidentiality regime and supervisory practices, as well as on the related equivalence decision issued by the European Commission. Where such assessment and decision have not yet been performed and adopted at the EU level in respect of the

specific TC at hand, CAs reported that they proceed autonomously with their own assessment.

88. With regard to the impact of equivalence of the regulatory regime and supervisory practices on the authorisation assessment, some CAs (BE, CY, CZ, FR, IE, LT, SE and SI) reported that failure to meet equivalence requirements provides grounds for refusal of the authorisation. Other CAs (DK, FI, GR, LU and MT) specified that failure to meet equivalence does not provide automatic grounds for refusal of the authorisation, and that refusal would depend on a case-by-case analysis. In addition, some CAs reported that failure to meet equivalence of the regulatory regime or supervisory practices is taken into account for the purpose of applying the simplified treatment (DE, EL, ES, FR, IT and LU).

#### 3.4.2 Relevance of the existence of an MoU with the TCHA

89. The effectiveness of cooperation and exchange of information are further assessment criteria taken into account by CAs in granting authorisation as a TCB. Whilst all CAs agree on the importance of such elements, CAs diverge on the need for cooperation to be formalised in an actual MoU.
90. Approximately half of the respondents (AT, BE, BG, CY, DE, DK, HR, HU, IE<sup>33</sup>, LV, PL, PT and NO) consider the conclusion of an MoU on the cooperation and exchange of information with the TCHA as a requirement (by law or in practice) for granting the authorisation, and its absence as a grounds for refusing authorisation.
91. Some CAs reported that formalisation of the cooperation with the TCHA in a MoU is not a requirement for granting authorisation and its absence does not create grounds for refusal (CZ, EL, ES, FI, FR, IT and NL). One CA (IT) reported that confidential information is exchanged, e.g. for participation in crisis management groups (CMGs), subject to prior assessment of the equivalence of the TC confidentiality regime in line with applicable EU law and practice.
92. Some CAs clarified that the absence of an MoU may impact on application of the simplified treatment (DE, EL, ES, FR and LU).

#### 3.4.3 Reciprocity

93. Several CAs reported that they consider evidence of reciprocity as one of the assessment criteria for granting authorisation as a TCB.
94. Whilst several respondents have reported that they consider the lack of evidence of reciprocity grounds for refusal of the authorisation, other CAs consider it as just one of the assessment criteria, the non-fulfilment of which does not automatically imply that authorisation will be refused.

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<sup>33</sup> Despite not formally creating legal grounds for refusing authorisation, IE specified that in practice authorisation is unlikely to be granted absent a MoU with the TCHA.

95. 3 CAs reported that application (or the extent of application) of the simplified treatment is conditional upon the TC's application of reciprocal prudential conditions to outgoing branches of credit institutions authorised in the CA's MS.

### 3.5 Scope of the authorised activities

96. Based on the responses received, authorised activities vary across the EU depending on the relevance and interaction of the following criteria: (i) activities covered by the authorisation granted by the TCHA to the TCCI; (ii) activities within Annex I CRD; (iii) activities that do not materially differ from those carried out by CRR/CRD credit institutions. It is worth noting that in this latter regard, such activities could also go beyond those listed in Annex I CRD and include other financial activities.
97. Several CAs (BE, BG, CZ, ES, FI, FR, GR, LV, PT, SI and SE) reported that they only grant authorisation for those activities which do not exceed those covered by TCHA authorisation.
98. This statement, however, has been further clarified by some CAs. One CA (CZ) specified that, whilst the authorisation to perform other activities is not prohibited under national law, this has not occurred in practice, and it would require increasing the intensity of the assessment in order to make sure that the TCCI, among other considerations, has the necessary and adequate expertise, internal governance arrangements, operational capabilities and IT solutions to carry out such other activities. Another CA (SI) clarified that for the TCB to be authorised to carry out other activities included in Annex I CRD which are not covered by the TCHA authorisation, the TCCI has to submit to an additional authorisation procedure.
99. With regard to the type of permitted activities that a TCB can be authorised to carry out, 12 respondents (CY, DE, EE, IE, GR, LT, LU, NL, NO, PT, SI and SK) reported that TCBs are authorised to provide the same activities set out in Annex I CRD; however, one CA (IE) specified that it is generally expected that the TCB will not engage in retail banking activities. 6 CAs (BG, ES, FI, FR, IT and PL) have reported that authorised TCBs may carry out other financial activities not listed in Annex I provided that they are the same or not materially different from those that can be carried out by credit institutions authorised in their MS under the CRR/CRD.
100. The scope of the authorised activities may also depend on the authorisation approach applied in the MS, whether it is universal – i.e. the authorisation covers all permissible activities – or 'activity by activity', i.e. the authorisation only covers those activities included in the programme of operations. Differences in approach broadly reflect those applying to credit institutions. Notably, 16 CAs have reported that they apply the universal authorisation regime, enabling the authorised TCB to carry on all the activities within the legal scope of the authorisation. Conversely, 10 CAs (AT, BG, CZ, DE, EE, HR, IE, IT, PL and PT) reported granting an activity by activity authorisation, allowing the authorised TCB to only provide those activities specifically included in the authorisation decision. 2 CAs (LT and SI) indicated that they apply a 'hybrid authorisation approach'. Notably in LT the



general rule envisages granting a universal authorisation, but the TCB can be authorised to carry out single activities upon the applicant's request or where the supervisor determines that the applicant is not sufficiently prepared/equipped to provide certain services. As regards SI, where the TCB is authorised to carry out activities other than those covered by the authorisation of the TCCI, it is subject to a separate authorisation procedure covering the specific additional activities for which it seeks authorisation (so an 'activity by activity' approach is followed).

### 3.5.1 Territorial scope of the authorisation

101. TCBs are not EU undertakings and as a consequence they do not have passporting rights. Therefore, as indicated in recital (23) CRD, TCBs cannot provide their services in other MSs on a cross-border basis. Along the same lines, Article 47(2), second sub-paragraph, CRD provides that the 'EBA shall publish on its website a list of all third-country branches authorised to operate in the Union, *indicating the Member State in which they are authorised to operate*'. CAs generally confirmed that the authorisation granted to the TCBs does not enable the entity to operate on a cross-border basis. CAs generally reported, however, that this aspect is not specifically monitored. Only one respondent (LU) reported that it monitors these aspects in the context of SREP and/or as part of on-site inspections; another CA reported that it monitors this aspect in the context of off-site supervision or an annual meeting with the TCB's management.
102. However, some margin of interpretation has been reported by some respondents. One CA (NL) indicated that although TCBs do not benefit from passporting rights, they can operate in other jurisdictions on a cross-border basis to the extent that the MS of destination does not raise any objection. Another CA (FR) reported that in some very limited and strict conditions, under a specific law relating to migrant regulations, some TCBs could be allowed, on a case-by-case basis, to provide limited cross-border services.
103. Without prejudice to the territorial scope of the TCB authorisation, several CAs reported that persons established in other MSs may, on their own exclusive initiative, receive services carried out by TCBs (reverse solicitation).

## 3.6 Authorisation process: information requirements to submit an application

104. As a general observation, a large majority of CAs have a regime in place on the information to be submitted by the TCCI to the CA with the application for authorisation as a TCB.
105. In addition, the majority of CAs (16 CAs) indicated that they facilitate the application process by providing case-by-case guidance as to the information to be submitted by the applicant, e.g. on the CA's website, in the course of bilateral meetings and/or conference calls with the applicant TCCI, including pre-application discussions, during which the prospective applicants can gain a better understanding of the authorisation process and supervisory expectations. In addition, 13 CAs indicated that they have a form or template in place to be completed by the TCCI for submitting the application for TCB authorisation.

106. Laws and practices diverge, however, on the breadth and content of the requested information: 8 CAs (AT, CY, DE, DK, ES, LU, NL and NO) reported that they apply the same information requirements applicable to the application for authorisation of credit institutions; 10 CAs (CZ, FR, GR, HR, HU, IE, IT, LT, LV and SE) reported that they envisage specific information requirements for authorisation as a TCB. In both cases, information relates to both the TCB project – notably the programme of operations, organisational structure and governance, outsourcing arrangements, effective direction, funding sources – and the TCCI, in particular with regard to its financial soundness and reputation.

### 3.6.1 Cooperation with the TCHA

107. In addition to requiring information on the TCCI, several CAs (BE, CZ, ES, FR<sup>34</sup>, HR, IT, LU and SK) reported that they usually exchange information and consult the TCHA in respect of the suitability of shareholders and the reputation of the members of the management body. Depending on each CA, areas of exchange of information and consultation may also include the financial soundness of the TCCI, the scope of the TCCI authorisation, the existence of close links that may create obstacles to supervision, as well as any information that may be relevant to assessing authorisation of the TCB. This also includes the way in which the TCHA intends to supervise the branch, notably its agreement to consolidated supervision which is required by 3 CAs (CY, CZ and NL). Even where an explicit consultation practice is not in place, the majority of CAs reported that they reserve the right to request information on the whole TCG, for example to request the annual consolidated accounts, the TCG's credit ratings where available, financial and prudential data and the liquidity arrangements between the parent office and the branch.

## 3.7 Refusal of authorisation

### 3.7.1 Grounds for refusal

108. 22 CAs indicated that specific grounds for refusing authorisation as a TCB are provided for in their jurisdiction. These concern a) the TC's failure to meet certain standards and b) TCCI-specific matters.
109. As illustrated above, with regard to the first point, grounds for refusing authorisation include: (i) failure to meet equivalence in term of the regulatory regime and supervisory practices; (ii) the absence of a MoU with the TCHA; (iii) lack of evidence of reciprocity; (iv) insufficiently effective supervision by the TCHA of the TCCI; (v) failure to meet a high standard of AML/CTF requirements.
110. With regard to the second point b), several CAs consider the TCCI's failure to meet financial soundness requirements (BE, CZ, ES, HR, LU, LV, NL, PL and SE) as providing grounds for

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<sup>34</sup> FR: TCBs have to provide an engagement letter from the TCCI in which the TCCI undertakes to ensure that all the requirements concerning the management body under the CRR are applied vis-à-vis its branch in France, either within the credit institution or this branch.

refusal. PL requires the TCCI to furnish a comfort letter that it will satisfy all claims incurred by the TCB with third parties.

### **3.7.2 Jurisdictional protection against refusal to grant authorisation as a TCB**

111. In terms of process and guarantees, CAs confirmed that jurisdictional protection is ensured against refusals of authorisation, which can be challenged by the applicant before administrative courts (11 CAs) or ordinary courts (2 CAs). 2 CAs also specified that the procedure for challenging the decision to reject authorisation as a TCB is similar to that applicable to decisions rejecting authorisation as a credit institution.

## **3.8 Time limits for granting or refusing authorisation**

112. 21 CAs indicated that the national legal framework defines the time limits for granting or refusing authorisation of the TCB. Several CAs reported that they have the same time limits in place as those applicable to assessing authorisation as a credit institution, as set out in Article 15 CRD, namely six months from receipt of a completed application or, in all cases, 12 months following receipt of the application.
113. Other CAs reported that they follow other laws and practices, providing a varied picture of the EU regulatory landscape.
- In 2 MSs (EE and HR), the time limit is 2 months after receipt of a completed application;
  - In 2 MSs (BG and HU), the time limit is 3 months after receipt of a completed application;
  - In 1 MS (IT), the time limit is 4 months after receipt of a completed application;
  - In 16 MSs (AT, BE, CY, CZ, ES, FI, FR, GR, IE, LT, LU, LV, MT, NL, NO and PT), the time limit is 6 months after receipt of a completed application and, in all cases, 12 months following receipt of the application.

### **3.8.1 Authorisation subject to conditions or limitations**

114. Similar to the approach used in the context of granting authorisation to credit institutions, 21 respondents indicated that they are empowered to grant authorisation as a TCB subject to conditions, limitations or other restrictions.
115. However, 7 CAs clarified that they have not yet applied these discretionary restrictions in practice or that they have not applied them in practice for a very long time.

## 4. Supervisory approach and regulatory framework

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### 4.1 General supervisory approach

116. 10 CAs (AT, BE, CY, EL, ES, FR, IT, MT, NL and RO) reported that they have – or envisage having in the case of countries where there are no TCBs at present – a dedicated team for the supervision of TCBs.
117. DE specified that in terms of the supervisory approach, TCBs are directly supervised in the same way as subsidiaries.
118. With regard to CAs adopting the branch-specific approach, IE explained that it applies the internal PRISM Framework, which is a risk assessment framework considering both the probability and impact risk of a TCB. Supervision of the risk areas is co-ordinated by a ‘Branch Management Committee’ established within the TCB. The TCB is supervised via on-site inspections and full risk assessment, which is built into strategic planning for the TCB. The CA also maintains an open dialogue with the TCHA.

#### 4.1.1 Supervisory categorisation

119. CAs reported that none of the TCBs currently established in their jurisdiction are considered significant.
120. 9 CAs (BE, BG, DE, FR, GR, IE, IT, LU and NL) have adopted internal categorisation of TCBs for the purposes of supervision ranging from categories of credit institutions, to the LSI supervisory approach, to general risk-based supervision that may be coupled with annual SREP scores.

#### 4.1.2 Supervisory examination programme

121. 9 CAs (BE, CY, DE, ES, FR, GR, IE, IT and LU) reported that they prepare a supervisory examination programme (SEP) for the TCBs under their remit. Where SEPs are adopted, they are usually prepared and reviewed on an annual basis and may include (i) planning of on-site and off-site inspections; (ii) indication of the frequency of meetings and calls with senior management and/or (iii) interactions with the TCHA.
122. In terms of content, SEPs usually focus on the TCB’s localised activity, rely on available documents and information and do not entail the request of TCCI-related information, save on a need-to-know basis. In some jurisdictions, and depending on the size and significance of the TCB, the SEP may also involve meetings with the TCCI’s senior management. DE specified that SEPs for TCBs are similar to those prepared for LSIs. PT clarified that, although a formal SEP was not prepared when TCBs were established in that jurisdiction, TCBs were taken into account within the annual planning of direct supervisory units. This implied a

minimum level of financial and prudential analysis to be performed which might include various exercises such as ICAAP and an internal control report; document analysis; meetings with senior management; etc...

123. The preparation of a SEP is also envisaged by the national regulations of HR, RO and SK, which currently do not host any TCBs. DK specified that, should any TCBs be granted authorisation in DK, the possibility of introducing such requirements would be evaluated. PL specified that national law provides that the scope of the CA's supervision should be agreed upon with the TCHA.

#### **4.1.3 TCCI establishment via both a TCB and a subsidiary in the same MS**

124. 6 CAs (DE, ES, FR, HU, IT and LU) indicated that some TCCIs are established in their jurisdiction via both a TCB and a subsidiary. The percentage of TCCIs having this kind of double presence in the MS varies across the different jurisdictions, i.e. 9% for FR, 4% for DE, 100% for HU, 12.5% for IT, 64% for LU and 25% for ES.
125. The reasons underlying this double presence depend on the different business models of the TCB and subsidiaries and on the provision of different types of activities. Regulatory considerations also play a role, e.g. subsidiaries, unlike branches, have passporting rights throughout the EU and can act as a depositary bank under the UCITS and AIFMD regimes. Branches, on the other hand, may benefit, subject to specific conditions, from exemptions from the solvency ratio and the LE limits and be a more advantageous vehicle for larger transactions. In some MSs, the double presence of TCBs and subsidiaries may be justified by the lower prudential requirements applied to branches. Furthermore, from a business perspective, branches can benefit from the TCCI rating and have better access to funding from institutional clients and capital markets.
126. From the perspective of supervisory practices and controls, with regard to the relations between the TCBs and the TCCI subsidiary established in the same MS, 4 CAs (ES, HU, IT and LU) reported that they carry out some kind of checks on the financial transactions between the TCB and the subsidiary. The intensity and frequency of such controls, however, vary: in HU they are performed on a best effort basis; in IT on an occasional basis; in ES indirectly, via the obligation to submit an external audit report including a section on this aspect. LU clarified that they are part of checks on intra-group transactions between the TCB and TCCI group in the context of ongoing supervision in respect of their volume and purposes.
127. Conversely, FR and DE stated that they do not carry out checks. In particular, FR indicated a lack of information on the relevant transactions, and DE reported that this is not deemed necessary in light of specific case-by-case reasons.
128. From a policy perspective, having regard to risk management and financial stability reasons, several CAs (BE, ES, FI, FR, GR, IE, IT and PT) are of the view that it is important to gain a supervisory vision of transactions between the two entities. One CA underscored that this may be particularly useful in cases of high interdependence in terms of funding and management bodies (PT).

## 4.2 Reporting and regular information collection

### 4.2.1 CRD annual reporting requirements

129. New Article 47(1a) CRD requires TCBs to report the following information to the (EU host) CA at least on an annual basis:
- ‘(a) the total assets corresponding to the activities of the branch authorised in that Member State;
  - (b) information on the liquid assets available to the branch, in particular the availability of liquid assets in Member State currencies;
  - (c) the own funds that are at the disposal of the branch;
  - (d) the deposit protection arrangements available to depositors in the branch;
  - (e) the risk management arrangements;
  - (f) the governance arrangements, including key function holders for the activities of the branch;
  - (g) the recovery plans covering the branch; and
  - (h) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.’
130. When the survey was launched, this provision had not yet been implemented into national law. 11 respondents (AT, BE, DE, ES, GR, HR, IT, IE, LT, LU and PT) stated that the information set out in Article 47(1a) CRD was already collected – in whole or in part – (or is envisaged to be collected) at least on an annual basis within the reporting requirements currently in force. 4 CAs (DE, ES, IE and LU) specified that they do not yet collect the information on the recovery plan covering the TCB.

## 4.3 National reporting requirements

131. CAs stated that they apply national reporting requirements. The extent of reporting requirements usually varies in line with the prudential requirements that are applied, but some reporting obligations are common across all three approaches that have been identified (subsidiary-like, branch-specific or simplified treatment). 8 of these CAs expressly clarified that TCBs are subject to reporting requirements that are similar to or the same as those applicable to credit institutions under their jurisdiction.
132. All CAs usually require some form of FinRep (simplified, based on national regulations) from all TCBs regardless of the regulatory approach applied. As far as COREP (Common Reporting Framework) is concerned, it may be waived in cases of branch-specific or simplified treatment or it may be required to the extent possible in line with the prudential requirements that are applied and the activities performed by the TCB. As a general observation, however, differences in approach have also emerged between MSs adopting similar regulatory and supervisory approaches. LU, for instance, stated that it also requires submission of reporting requirements in cases in which simplified treatment is applied.

133. There is an element of convergence in the indication by a large majority of CAs (BE, CY, CZ, DE, EE, ES, FR, GR, HR, HU, IT, LT, LU, LV, MT and SE) that they subject TCBs to statistical and financial stability reporting requirements. In some cases, these requirements are not specific to TCBs but are the same as those applicable to credit institutions (e.g. IT, HU, LT and MT).
134. As a preliminary observation, national laws and regulations significantly diverge as regards the accounting framework imposed on the TCB. 5 CAs (BE, ES, FR, GR and PL) reported that they require the application of national GAAP. 4 CAs (CY, IE, LU and PT) reported that they require the application of IFRS accounting standards, while IT reported that it requires IFRS or NGAAP on a case-by-case basis.
135. With regard to ICAAP and ILAAP data collection:
- 11 CAs (AT, CZ, DE, FR, GR, HR, HU, IT, LT, LU and PT) envisage ICAAP requirements for TCBs;
  - 10 CAs (AT, CZ, FR, GR, HR, HU, IT, LT, LU and PT) envisage ILAAP requirements for TCBs. In addition, NL reported that TCBs may submit biannual ILAAPs on a voluntary basis.

It is worth noting that DE and IT exempt TCBs that benefit from preferential treatment from ICAAP and ILAAP reporting requirements.

136. In addition to the general questions above, CAs were asked to indicate whether TCBs have to submit data on the following specific assets/positions:
- a) assets and exposures with breakdowns: requested by 19 CAs (AT, BE, CY, CZ, DE, DK, EE, ES, FR, GR, HR, HU, IE, IT, LT, LU, LV, MT, PT and RO);
  - b) breakdowns of assets regarding borrower-based measures: requested by 17 CAs (AT, BE, CY, CZ, DE, DK, EE, ES, FR, GR, HR, HU, IE, LT, LU, PT and RO);
  - c) liabilities: requested by 17 CAs (AT, BE, CY, CZ, DE, DK, EE, ES, FR, GR, HR, IE, IT, LT, LU, PT and RO);
  - d) intra-financial sector exposures: requested by 17 CAs – the same as those under point (c)
  - e) information necessary to identify other systemically important institutions (O-SIIs): requested by 13 CAs (AT, BE, CY, CZ, EE, ES, GR, HR, IT, PT, RO, LT and LU) to collect the information necessary to identify other systemically important institutions (O-SIIs).
  - f) clearing/settlement of euro-denominated transactions and access to EU FMIs: requested by 12 CAs (AT, BE, CY, CZ, EE, ES, GR, HR, IT, LT, PT and RO);
  - g) EUR-denominated transactions: requested by 15 CAs (AT, BE, CY, CZ, EE, ES, FR, GR, IE, IT, LT, LU, MT, PT and RO);

- h) individual loans: requested by 9 CAs, of which 4 CAs only impose reporting requirements in relation to specific types of loans, e.g. business loans (CZ) or subordinated loans (LU).

#### 4.3.1 Information requirements relating to the TCCI

137. The survey asked CAs to indicate if they require TCBs to submit TCCI-related information on prudential or other aspects relevant to TCB supervision. In general it is observed that the collection of information on the TCCI is not a common practice, both by CAs applying the subsidiary-like approach – where the need for TCCI data may be lower – and by CAs applying the branch-specific approach or the simplified treatment.
138. With regard to the former, FR and GR explained that where TCBs are subject to the subsidiary-like approach, they are subject to the same reporting obligations as LSI credit institutions, and CAs may request TCCI-related information from the TCHA in case needed. In addition, GR specified that the TCHA has to notify the CA of any significant change, for instance as regards the ownership structure. IT clarified that TCCI-related information is useful as additional support information to gain a more comprehensive picture of the TCB. ES explained that proportionality considerations in relation to the TCB's risk profile apply. CY clarified that it requests prudential information relating to the TCCI from the TCHA on a need-to-know basis.
139. With regard to the countries currently hosting TCBs, the responses to the survey are summarised below:
- Information on own funds, leverage, funding and liquidity is collected on a regular basis by 5 CAs (ES, IE, IT, LU and MT), via the submission of annual financial statements (ES, IT and MT), via ad hoc reports (LU on CET1 and TC ratios and leverage ratio) or via periodic calls with the home regulator (IE). Three CAs (BE, CY and FR) indicated that, although they do not collect such information regularly, they may request it on a case-by-case basis.
  - information on the TCCI's business strategy in relation to the TCB is collected on a regular basis only by IT and IE. In particular, IE reported that it arranges an annual meeting with front-line business heads on the business's strategy. A further 3 CAs (BE, FR and LU) indicated that they may request such information on a case-by-case basis;
  - information on recovery plans relating to the actions that the parent company could take in the event of a significant deterioration in the financial situation of the TCB is collected on a case-by-case basis by 4 CAs (BE, FR, IT and LU). IT specified that information is not collected on TCBs that are subject to simplified treatment;
  - no CA collects information on the supervisory assessment of the TCCI on a regular basis; 5 CAs (BE, CY, FR, IE and LU) stated that they may request this information on a case-by-case basis, and IT specified that it receives this kind of information in the context of CMGs or colleges.



### 4.3.2 Application of the principle of proportionality to reporting requirements

140. CAs generally reported that they subject TCB reporting requirements to the principle of proportionality, but clarified that their application may be restricted to some data only. 3 CAs (IE, PT and SE) indicated that in their legal/regulatory framework reporting requirements are calibrated depending on the TCB's significance and/or complexity.

## 4.4 Supervisory review process

141. With regard to the countries hosting TCBs, they reported that a supervisory review process similar to that applied to credit institutions is applied to TCBs. In respect of TCBs subject to the simplified treatment, the SREP exercise is limited to the identification and assessment of the risks.
142. Some of the above-mentioned CAs reported that they apply the proportionality principle in the definition of the supervisory review:
- (a) in DE, governance and existing risks to capital and liquidity are taken into account in a proportionate manner. The review is usually followed by the determination of SREP capital add-ons, except for TCBs subject to simplified treatment;
  - (b) In GR, the LSI methodology is applied and the frequency of the review depends on the supervisory priority given to the TCB;
  - (c) in IT, a simplified supervisory review which nonetheless takes into account all risk profiles is carried out in respect of TCBs subject to simplified treatment. The results of the review may entail the adoption of supervisory actions;
  - (d) in ES, an SREP for TCBs is not a regulatory requirement and is therefore not carried out. However, should it be performed, the size of the TCB would be taken into account in the assessment of all elements of the SREP;
  - (e) in FR, the supervisory review of TCBs is carried out subject to a risk-based approach like that applied to credit institutions, and the frequency of the review depends on the TCB's characteristics. The outcome of the SREP exercise may lead to a gradual level of supervisory action similarly to the consequences of the LSI SREP.
  - (f) In LU, SREP assessments for TCBs are carried out on an annual basis based on the SREP EBA templates. The outcome of the SREP cycle may lead, where necessary, to the adoption of supervisory measures which can be quantitative or qualitative. Furthermore, the outcome of the SREP is used to determine the TCB supervisory risk classification, i.e. whether it will be classified as 'intensified supervision' for the next SREP cycle and, among others, to plan future on-site inspections.
143. With regard to CAs applying the branch-specific approach, CY clarified that since the TCB is not a separate legal entity and does not hold capital, no SREP exercise is carried out. It specified, however, that when deemed appropriate supervisory measures may be imposed as a result of on/off-site examinations/reviews carried out by the CA. These consist, as a preliminary step, in the CA's assessment of the TCB's significance in respect of the national

banking system, followed by a review of the financial statements published by the TCCI, assessments made by ECAs, press articles from reliable news agencies and communication with the TCHA. The CA also monitors statistical and prudential reports submitted by TCBs in order to identify and investigate abnormal changes/trends and to ensure compliance with supervisory/regulatory requirements. On-site inspections/examinations are carried out if deemed necessary, e.g. to establish compliance with supervisory/regulatory requirements and assess the validity/completeness/accuracy of data and information submitted to the CA. The CA also holds meetings with the TCCI's and TCB's management and/or the TCB's internal and/or external auditors.

- 144. IE explained that TCBs are supervised under the internal PRISM framework, which is risk-based. On/off-site inspections, examinations and full risk assessments are also carried out.
- 145. With regard to the countries not hosting TCBs, CAs reported that, in accordance with their legal/regulatory framework, a supervisory review process similar to that applied to credit institutions would apply to TCBs.

#### 4.4.1 Performance of stress tests

- 146. 6 CAs (CZ, DE, HR, LU, PT and RO) are empowered to perform stress test on TCBs; amongst these, 4 CAs specified that they have never carried them out in practice because there is no TCB in their jurisdiction or there are too few of them (CZ, HR, PT and RO). The 2 CAs (DE, LU) that effectively perform stress tests on TCBs apply the same regime applicable to credit institutions. In particular, DE specified that it applies the same regime set forth for LSIs on a bi-annual basis to all TCBs, except to TCBs subject to simplified treatment.

## 4.5 On-site supervision

### 4.5.1 On-site visits

- 147. Several CAs (BE, BG, DE, ES, FR, GR, IE, IT, LU and MT) reported that they carry out supervisory visits (i.e. talks and interviews with key functions) on a regular basis. NL performs them on an occasional basis. CZ indicated that it applies proportionality criteria to the need for on-site visits. Where TCBs are not established, CAs indicated that they would carry on supervisory visits should TCBs be established.
- 148. Where supervisory visits are carried out on a regular basis, the frequency of such inspections varies, ranging from 3 months (IE) to 2 years (FR, NL).
- 149. 4 CAs (BE, ES, FR, MT) stated that supervisory visits usually have a comprehensive coverage, while NL specified that the scope of interviews with management is limited to ILAAP. Other CAs specified that the scope of supervisory visits may vary depending on the TCB features and risks, including SREP results.

#### 4.5.2 On-site examinations

150. A large majority of CAs reported that they carry out or are empowered to carry out on-site examinations of TCBs.
151. With regard to the areas investigated during on-site examinations, some CAs reported that they cover any area of the supervisory activity. Other CAs indicated that they usually concentrate on specific areas
152. 5 CAs (BE, ES, FR, GR and LU) specified that, in addition to standalone examinations, they may also carry out thematic cross-institutional reviews, while other 5 CAs (HU, IE, IT, MT and NL) indicated that on-site examinations are usually carried out on a standalone basis only.
153. As a general observation, a minority of CAs stated that they inform the TCB's home competent authority of any on-site examination carried out and reported that they liaise with the TCHA when this is considered necessary in light of the inspection's findings. Going into greater detail, 4 CAs (BE, HU, IE and MT) reported that they always inform the TCHA in cases of on-site examinations of the TCB; conversely, 6 CAs (CY, EL, ES, FR, IT, LU and NL) reported that they only liaise with the TCHA on a need-to-know basis in light of the findings of the inspection. In 2 cases (GR and IT), communication with the TCHA might be indirect, i.e. the TCB may be asked to contact the TCHA.
154. In addition, 4 CAs (EE, HR, RO and NO) indicated that they would inform the TCHA of the on-site examinations carried out should a TCB be established in their jurisdiction.

#### 4.5.3 Coordination and cooperation with the TCHA

155. In the MSs where TCBs are established, a large majority of CAs indicated that they interact with the TCHA at any time needed via meetings/conference calls, emails, supervisory colleges, or CMGs for G-SIBs.
156. Communications are usually more frequent during the application process and typically intensify in cases of crisis, although this may depend on the existence of a MoU with the TCHA. Furthermore, 8 CAs (BE, CY, DE, ES, FR, IE, IT and MT) indicated that they are informed when the TCHA carries out an inspection of the TCB.
157. These interactions do not usually include joint work with the TCHA: only 1 CA (IE) reported that it has carried out this kind of work. Other CAs specified that – although they have never carried out joint work with TCHAs – MoUs generally allow for this possibility and, thus, it can be utilised when needed.
158. Additionally 5 CAs (BE, DE, IE, IT and LU) reported that they participate in supervisory colleges of TCCI groups that have a branch in their country. IT and DE CAs specified that their participation depends on the TCB's materiality considerations. At the international level, regular interactions occur with regard to G-SIBs, in respect of which firm-specific crisis management groups (CMGs) have to be set up.

## 4.6 Supervision of AML/CFT compliance of the third country branch

159. Most AML/CFT CAs are responsible for the supervision of TCBs' compliance with national AML/CFT rules.
160. Most, but not all, AML/CFT CAs suggested that they included TCBs in their ML/TF risk assessment of the sector and in their AML/CFT supervisory strategy and plan.
161. There were, however, marked differences in AML/CFT CAs' approaches to the AML/CFT supervision of TCBs. While most AML/CFT CAs indicated that they would apply the same off-site supervisory measures to TCBs as they would to other credit institutions, the number of on-site AML/CFT inspections AML/CFT CAs had carried out over the last five years varied significantly and ranged from none to 19, with most AML/CFT CAs carrying out no or less than four onsite inspections of TCBs during that period. Some AML/CFT CAs suggested that the low number of on-site inspections reflected the number of TCBs in their jurisdiction or the level of ML/TF risk associated with their activity, though this link was not always apparent.
162. Similarly, while most AML/CFT CAs indicated that they could impose the same sanctions or supervisory measures on TCBs for AML/CFT breaches as they could on other credit institutions, only three respondents indicated that they had done so since 2017.
163. Cooperation between host and TC AML/CFT authorities appeared to be limited. Less than 10 AML/CFT CAs indicated that they exchanged information or had established bilateral relations, and of these all cooperated with the TC AML/CFT on an ad hoc basis only where ML/TF risks were increased or AML/CFT system and control failures had materialised. Several respondents pointed to legal obstacles in their national laws that could prevent cooperation and information exchange, and one respondent provided an example of a third country's law that prevented information exchange within financial groups. Legal provisions did not, however, appear to create obstacles to cooperation and information exchange in the majority of cases as long as confidentiality and professional secrecy rules were respected. Most AML/CFT CAs had not, when answering the questionnaire, completed their mapping of institutions under the ESAs' AML/CFT Cooperation Guidelines and consequently only four respondents indicated that they had plans to set up an AML/CFT college for TCBs on their territory, while two had invited TC authorities to participate in AML/CFT colleges as observers.
164. The vast majority of CAs indicated that they would not rely on AML/CFT inspections of the TCB which are carried out by the third country AML/CFT authority. Some CAs indicated that they would consider inspection findings by third country authorities in addition to their own.

## 4.7 Recovery planning and crisis management

165. As mentioned above, in accordance with new Article 47(1a) CRD, TCBs are required to submit to the CA, at least on an annual basis, 'g) the recovery plans covering the branch', alongside other information. When the survey was launched, this provision had not entered into force yet. Based on the responses received, the state of play is summarised below.
166. 8 CAs (CZ, DK, ES, GR, HR, HU, PL, PT and RO) reported that, under their national regulatory framework, TCBs are required to prepare individual recovery plans. Some specified that they apply simplified obligations and waivers.
167. IE reported the need for TCBs to be covered by the group recovery and resolution plan and the importance of an open dialogue with the TCHA.
168. IT reported that TCBs are requested to provide information on the branch's role within the group recovery plan developed by the headquarters. This requirement does not apply if the TCB is subject to simplified treatment. IT also stated that it does not usually cooperate with the TCHA in this respect.
169. DE, FR and LU observed that the BRRD provisions do not require the development of an individual recovery plan for the TCB and that, to the extent that the TCB belongs to the scope of consolidation of a subsidiary of the TCCI established in the EU, it would be covered by the group recovery plan. BE observed that it would not be reasonable to require TCBs to develop an individual recovery plan considering that they are not separate legal entities and noted the importance of increasing the exchange of information with the TCCI and TCHA.

## 5. Policy views and recommendations for further harmonisation

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### 5.1 State of play

170. The current EU legal framework provides some guidance on the treatment of TCBs, an area which predominantly falls under national competences. For a long time, the ‘traditional’ principle set out in Article 47 CRD preventing CAs from applying a more favourable treatment to TCBs than that applied to intra-EU branches has been the only indication set out in the EU legal framework.
171. Recently, developments moving towards heightened EU attention to TCBs have found their way into EU legislation. Reporting/communication requirements from the TCB to the CA, as well as reporting requirements from the CAs to the EBA have recently been introduced in Article 47 CRD. These new obligations aim to collect information that provides the CA with a view of the size, available resources and internal organisation of the TCB so as to ensure appropriate monitoring and supervision. In addition, such new reporting requirements aim to enable a centralised view of the presence and significance of TCBs across the EU.
172. Such new requirements should not be exclusively seen in isolation but instead in the context of the renewed EU interest in TCGs operating in the EU as a result of structural changes. The first change relates to cross-border regulatory reforms in the aftermath of the financial crisis. These consist of the requirement to establish an IPU when two or more institutions from the TCG are established in the EU and the TCG holds no less than EUR 40 billion, via institutions and TCBs, in the EU (Article 21b CRD).
173. The other factor concerns the departure of the UK from the EU, which has prompted the reorganisation of the presence of TCGs within the EU, including via TCBs. As illustrated in Chapter 2, post-Brexit data shows a significant increase in the total number of TCBs and in the total assets held by TCBs in the EU, thus providing grounds for the enhanced EU attention towards TCBs.

#### 5.1.1 National regulatory and supervisory fragmentation

174. The results of the stocktaking exercise illustrated in the previous chapters of this Report have brought to the fore the existence of divergent national approaches to the authorisation, regulation and supervision of TCBs, one centred on the treatment of TCBs as subsidiaries to the extent possible, and others more focused on acknowledging that TCBs are not separate legal entities from the TCCI. This requires increased dependence on the equivalence of the TC regulatory regime and supervisory practices, and reliance on effective cooperation with the TCHA. Additional elements contributing to the divergence of national approaches are the determination of capital and liquidity requirements at the

TCB level, the possibility of granting or applying prudential waivers/exemptions, as well as the role of reciprocity (if any).

### **5.1.2 Financial stability, regulatory and supervisory asymmetries and arbitrage opportunities**

175. It is acknowledged that whilst TCBs are only allowed to operate within the MS where they are established and do not have passporting rights, TCBs operating in the wholesale market providing activities with financial interlinkages such as payments, clearing, settlement, custody, intra-financial system borrowing and lending, investment banking and corporate banking may have significant interconnections with the EU internal market. Negative cross-border spillover effects may therefore stem from the financial interlinkages of the activities performed and the interconnectedness of the counterparties to such TCBs operations.
176. Although arbitrage opportunities arising from the choice of the most favourable regulatory and supervisory jurisdictions are to some extent restricted by the requirement that TCBs may only operate within the MS where they are established and by the fact that TCBs do not have passporting rights, they are not excluded and are supported by the national regulatory and supervisory fragmentation. Arbitrage opportunities may, for instance, determine location preferences for those TCBs which carry out activities for TCCI customers and have no link to the local economy of the MS where they are established.
177. The CRD regime restricts the scope of activity of TCBs to the MS where they are established, and is different from the MiFID/MiFIR regime, which envisages the provision of passporting rights to branches of third country firms when certain conditions are met. Under Article 47(3) MiFIR<sup>35</sup>, when implemented, branches of third country firms with their head office in third countries with a regime that is considered equivalent by the European Commission will be able to provide the services set out in Section I of Annex II to MiFID to eligible counterparties and professional clients across the whole EU. This entails the potential for misalignment as to the scope of authorisation for the provision of banking and financial services, providing incentives for arbitrage opportunities to the extent that TCBs of TCIs may also be authorised under Article 39 MiFID.
178. Group structuring opportunities may be supported by variations in national frameworks applicable to TCBs which are accompanied by asymmetries at the level (national and EU) of regulation and supervision applicable respectively to TCBs and subsidiaries of credit institutions belonging to TCGs. Whilst the regulation and supervision of TCBs is anchored at the national level, the regulation and, at least in part, the supervision, of credit institutions is exercised at EU level. The different national regulatory and supervisory treatment of TCBs may affect the TCCI's choice as to the establishment of a TCB or a

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<sup>35</sup> 'A third country firm established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is authorised in accordance with Article 39 of Directive 2014/65/EU (MiFID), shall be able to provide the services and activities covered under the authorisation to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in other Member States of the Union without the establishment of new branches. For that purpose, it shall comply with the information requirements for the cross-border provision of services and activities in Article 34 of Directive 2014/65/EU.'

subsidiary in order to carry out its EU activities or the double establishment of a TCB and subsidiary in the same or different MSs.

179. When considered in the context of the IPU framework, such misalignment in the regulatory and supervisory levels between TCBs and EU subsidiaries of TCGs lends itself to arbitrage opportunities as regards the TCG's decision as to the legal form and MS of preference to carry out activities within the EU. Whilst assets held by the TCBs are computed to determine whether an IPU needs to be established, the TCB itself is not included within the IPU consolidated perimeter.
180. In addition, it should be ensured that the increased presence and business carried out by TCBs within the EU consistently respect a level playing field between EU and international players. An appropriate balance has to be found between preserving the openness of the EU financial and business market with the need for competition between TCBs and EU credit institutions not to be distorted.
181. In this context of national regulatory fragmentation, there is, as a minimum, a need to ensure the comparability of TCBs belonging to the same TCG, irrespective of where they are established. Lack of comparability may hamper CAs' effective cooperation and supervision of the TCG entities established in the EU. The misalignment of regulation and supervision between the national and EU level may give rise to a lack of transparency about the TCG's overall activities in the EU. In light of the interconnectedness of the TCB with other TCG entities operating in the EU, this may hinder a comprehensive understanding of the potential risks to the EU financial market which are associated with the TCG's EU operations.
182. Against this background, it is critical that CAs supervising TCBs and CAs supervising institutions of the same TCG effectively cooperate closely as provided in Article 47(2a) CRD, 'to ensure that all activities of that third-country group in the Union are subject to comprehensive supervision, to prevent the requirements applicable to third-country groups pursuant to this Directive and Regulation (EU) No 575/2013 from being circumvented and to prevent any detrimental impact on the financial stability of the Union'.
183. For such cooperation to be effective, some harmonised regulatory and reporting requirements from the TCB to the CA should be introduced into the EU framework, ensuring an adequate flow of information to the supervisor and to make comparability of TCBs possible.

### **5.1.3 General approach and objectives of further EU harmonisation of the treatment of TCBs**

184. From the EU perspective, further EU harmonisation should pursue at least the following objectives:
- a) preserving the openness of the EU financial market to foreign players, acknowledging their beneficial contribution to the local economy and to international trade and finance;
  - b) ensuring that the same TCs are treated equally across the EU;



- c) ensuring the application of a minimum harmonised regulatory approach in order to avoid arbitrage opportunities across the EU;
- d) ensuring the safe and prudent management of TCBs in accordance with proportionate regulatory requirements and supervisory practices in order to maintain financial stability;
- e) ensuring adequate monitoring and supervision of TCBs' activities via the appropriate transparency of TCBs' operations and reporting requirements in order to capture and mitigate the associated risks;
- f) ensuring that the rationale for the requirement on TCGs to set up one or more IPUs is not circumvented by an unbalanced distribution of activities between TCBs and subsidiaries within the EU.

**Recommendation 1 – Further harmonisation and impact assessment**

It is therefore recommended to further harmonise the EU regime applicable to TCBs. The proposals formulated below are high-level recommendations to be further developed based on a comprehensive impact assessment. The EBA stands ready to provide the necessary assistance in this regard. In the meantime, the EBA will continue to monitor developments in relation to the establishment of TCBs in the EU, paying specific attention to the relationship with the implementation of the IPU requirement.

## 5.2 TCB and subsidiary

### 5.2.1 Size, activity and interconnectedness of the TCB

185. As a general principle, credit institutions should be free to choose the legal form under which they intend to carry on their activities. In light of the increased number and size of TCBs, as shown by recent data, it is opportune to enhance the regulatory and supervisory approach to these entities to ensure consistency across the EU and with the EU IPU framework, including with regard to potential risks associated with TCBs' operations relating to the types of activities, size and exposure to the local economy. TCBs are not separate legal entities from TCCIs, they are directly exposed to negative spillovers in cases of financial distress and are completely dependent on the prompt availability of the TCCI's capital and liquidity resources to absorb losses.

**Recommendation 2 – Subsidiarisation mechanism linked to size, activity and interconnectedness**

In order to reconcile the need to ensure the openness of the EU financial market to TCGs with the need to ensure a prudentially safe and sound operation of TCBs, it is recommended to consider introducing a subsidiarisation mechanism. The Level 1 text should envisage laying down relevant quantitative thresholds and qualitative criteria that, if exceeded, could determine the conversion of the TCB into a subsidiary in order to continue carrying out its activities. Appropriate consideration should be given to the continuous supervisory dialogue with the TCB/TCCI and the effective mutual cooperation

with the TCHA in devising potential mitigation measures that could ensure safe and sound prudential management of the TCBs' activities and associated risks.

Thresholds should be tied to and proportionate to the objectives pursued and reflect diversified situations across the EU. One objective should be warranting a balanced distribution of activities conducted by TCGs within the EU via TCBs and subsidiaries in order to ensure respect for the substantive rationale of the IPU requirement and that its compliance is not merely formal. For this purpose, a quantitative absolute threshold applicable throughout the EU, e.g. identified as an amount of the TCG's total assets held in the EU by the TCB(s), should be identified.

To capture scenarios where such absolute threshold is not met by the TCB, but the TCB could nonetheless pose financial stability risks, qualitative or other indicators should be envisaged. Attention should be paid to avoid that such additional indicators have potential adverse impact on arbitrage and level playing field across the EU.

To ensure the effectiveness of the implementation of the subsidiarisation mechanism, consideration could be given to empowering CAs to request the conversion of TCBs into subsidiaries when the relevant conditions are met.

It is recommended that the determination and calibration of the relevant thresholds ensure consistency with the IPU framework and are subject to a prior comprehensive impact assessment.

### 5.2.2 Deposit-taking activity by TCBs

186. Deposit-taking activity by branches of foreign banks is subject to restrictions in several jurisdictions. Restrictions usually apply to retail deposit-taking activities which are usually carried out via subsidiaries, a modality favoured by both credit institutions and regulators. The rationale lies in the need to ensure depositors' protection and to avoid potential burdens on the local DGS and ultimately the national banking system in the event of payouts.
187. Two risks should be considered when covered deposits collected by the TCB are under the protection of a third country DGS, even where it has been assessed to be subject to a regime equivalent to that in force in the EU. Firstly, it might be operationally challenging for the third country DGSs to reimburse depositors in the EU, which is relevant as TCBs are likely to hold deposits of EU citizens. Secondly, there is a risk of potential contingent discriminatory decisions/regulations against overseas depositors adopted by the TC in the event of an actual payout. Both risks could mean that depositors are not reimbursed as quickly as they would have been if the branch was protected by an EU DGS, and in consequence could undermine the trust in deposit protection in the EU. Thus, from the EU depositor perspective, coverage by a third country DGS could present more risks in comparison to EU DGS coverage.
188. Currently, the most common practice for TCBs established in the EU is to require them to become members of an EU DGS following a negative equivalence assessment of the TC DGS or the absence of such an assessment. It should be further observed, however, that the

failure of such a TCB could expose the EU DGS, as it would need to use its resources to reimburse depositors, and may not be able to recover as much in the insolvency proceedings as it would have, had it been a failure of an EU credit institution. The amount of covered deposits held by the TCB would determine whether the exposure of the DGS is significant. In such a case, the liability incurred to repay depositors would be a burden for the national banking system as EU credit institutions would need to replenish the DGS's resources. The materiality of such a burden would be driven by the materiality of the amount of covered deposits held by the TCB.

189. As mentioned in Chapter 3 of this Report, taking into account the current practice of requiring TCBs to join EU DGSs in most cases, the immateriality of covered deposits held by TCBs<sup>36</sup>, and in pursuance of depositors protection, the EBA Opinion on the eligibility of deposits, coverage level and cooperation between DGSs explicitly recommends that TCBs should be members of EU DGSs instead of third country DGSs<sup>37</sup>. The Opinion also recommended some potential flexibility for MSs in certain instances, including where the TCB does not take deposits within the meaning of the DGSD, and potentially instances where such a requirement would lead to double coverage by an EU DGS and the third country DGS.

**Recommendation 3 – Subsidiarisation mechanism linked to deposit-taking activity of covered deposits**

Based on the above, it is recommended that TCBs should be allowed to carry out deposit-taking activities subject to the application of quantitative restrictions on deposit-taking of eligible deposits. From a policy perspective, this would entail burdens on customers should they need to change bank but would ensure the level playing field across the EU. The determination of the relevant threshold should follow an impact assessment.

Conversely, deposit-taking activity of non-eligible deposits under Article 5, letters a), b), d), e), g), h), i) and k) DGSD<sup>38</sup>, which is part of the performance of activities conducted by wholesale TCBs, should not be subject to any restrictions.

<sup>36</sup> EBA Opinion on deposit guarantee scheme funding and uses of deposit guarantee scheme funds (EBA/OP/2020/02 of 3 January 2020), paragraph 350, available at [EBA Opinion on DGS funding and uses of DGS funds.pdf \(europa.eu\)](https://eba.europa.eu/sites/default/documents/files/documents/10180/2622242/324e89ec-3523-4c5b-bd4f-e415367212bb/EBA%20Opinion%20on%20the%20eligibility%20of%20deposits%20coverage%20level%20and%20cooperation%20between%20DGSs.pdf?retry=1).

<sup>37</sup> EBA Opinion on the eligibility of deposits, coverage level and cooperation between deposit guarantee schemes (EBA Op-2019-10 of 8 August 2019), recommendation (viii), page 8, available together with the Report at <https://eba.europa.eu/sites/default/documents/files/documents/10180/2622242/324e89ec-3523-4c5b-bd4f-e415367212bb/EBA%20Opinion%20on%20the%20eligibility%20of%20deposits%20coverage%20level%20and%20cooperation%20between%20DGSs.pdf?retry=1>

<sup>38</sup> 'The following shall be excluded from any repayment by a DGS: (a) subject to Article 7(3) of this Directive, deposits made by other credit institutions on their own behalf and for their own account; (b) own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013; (d) deposits by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013; (e) deposits by investment firms as defined in point (1) of Article 4(1) of Directive 2004/39/EC; (g) deposits by insurance undertakings and by reinsurance undertakings as referred to in Article 13(1) to (6) of Directive 2009/138/EC of the European Parliament and of the Council (1); (h) deposits by collective investment undertakings; (i) deposits by pension and retirement funds; (k) debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.'

## 5.3 Access to the market: authorisation requirements

### 5.3.1 Equivalence

190. The results of the stocktaking exercise show that the equivalence of the TC regulatory regime and supervisory practices is generally considered by CAs for purposes of granting authorisation. Absence of separate legal entity of the TCB from the TCCI increases the reliance on high standard of prudential requirements and on effective TCHA supervision and cooperation. In this context, the equivalence of the TC's regulatory regime and supervisory practices is critical for sound and prudent management of TCBs.

#### **Recommendation 4 – - Equivalence**

To ensure TC regimes are treated equally across the EU and to avoid arbitrage opportunities, it is recommended that the assessment of the equivalence of the regulatory regime and supervisory practices be exclusively carried out at the EU level. For this purpose, the decision issued by the Commission on the equivalence of regulatory and supervisory regimes for the treatment of exposures under the CRR/CRD<sup>39</sup>, and the outcome of the assessment of the equivalence of the confidentiality regime of third country authorities<sup>40</sup>, should be used for granting authorisation as a TCB to operate within the MS where the application for authorisation has been submitted.

Mechanisms should be envisaged to ensure business continuity for those TCBs originating from TCs whose prudential and supervisory regimes have not yet been assessed at the EU level.

### 5.3.2 Existence of an MoU with the TCHA

191. Considering that TCBs are not separate legal entities from the TCCI and that they are inevitably negatively impacted by financial or other stresses affecting the TCCI, effective international cooperation and the exchange of information between the TCHA and the CA is a pillar of the safety and soundness of the management of the TCB.

#### **Recommendation 5 – MoUs**

To ensure that such cooperation is smooth, regular and effective even in cases of crisis, it is recommended that granting authorisation as a TCB is subject to the existence/conclusion of MoUs between the CA and the TCHA at the moment authorisation is issued. MoUs should cover cooperation and the exchange of information in ongoing supervision, crisis management and resolution. Templates developed by the EBA in both supervisory and resolution matters should be used where MoUs with the TCHA have not been concluded by CAs (or resolution authorities) yet.

<sup>39</sup> The decision listing third countries so far assessed to be equivalent is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D2166&from=EN>

<sup>40</sup> EBA Guidelines on equivalence of non-EU authorities for participation in supervisory colleges, available at <https://www.eba.europa.eu/regulation-and-policy/third-country-equivalence-and-international-cooperation>

### 5.3.3 Authorisation

192. Article 47 CRD sets out the general principle that TCBs established in one MS cannot benefit from more favourable treatment than that applied to the intra-EU branch of a CRR/CRD credit institution.
193. Under the national laws currently in force in various MSs, similarly to what is applicable to intra-EU branches of CRR/CRD credit institutions, TCBs may be authorised to provide activities envisaged by the national law of the MS where they are established. It is acknowledged that this practice is in contradiction to the further EU harmonisation of the TCB regime and if applied too broadly may have adverse consequences for the sound and prudent management of the TCB, and potentially may give rise to arbitrage opportunities based on the additional number of activities that may be exercised under the applicable national law.
194. Based on the stocktaking exercise, it has emerged that margins for intra-EU operations are left to TCBs by applying the notion of ‘reverse solicitation’. It should be remembered that since TCBs do not have passporting rights, they are prevented from providing services cross-border, including any marketing and servicing activity. Whilst reverse solicitation is not strictly speaking prohibited, it does not amount to a right to which the TCB is entitled. Rather, it is a prerogative of EU legal and natural persons to receive the performance of services where certain conditions are met. Reverse solicitation has therefore to be considered an exceptional modality of doing business, purely passively and not entailing any active role (e.g. marketing in whatever form) by the TCB. As such, it cannot be part of the TCB’s business model, in particular in respect of identifying the customer base.
195. With regard to the objective scope of the authorisation granted to the TCB, the results of the stocktaking exercise show that the approach towards TCBs’ authorisation broadly replicates the approach taken towards the authorisation of credit institutions, even though some CAs that take a universal approach to the authorisation of credit institutions favour an activity-by-activity approach in respect of TCBs. Considering that TCBs are not separate legal entities and are exposed to the TCCI’s potential vulnerabilities, and in order to facilitate monitoring of the conduct of authorised activities, it is recommended that the activity-by-activity approach is adopted with regard to the objective scope of the authorisation granted to TCBs.

#### **Recommendation 6 – Authorisation**

In order to ensure that the principle under Article 47 CRD is respected, it is recommended that the scope of the TCB’s authorised activities should not exceed that of the activities authorised by the TCHA to the TCCI and that, at the same time, such TCB permitted activities should be covered by Annex I CRD and Annex I Sections A and B to MiFID.

In addition, it is recommended that TCBs may only be authorised to conduct those additional activities envisaged by national law which at the same time are covered by the authorisation granted to the TCCI by the TCHA.

It is recommended that, as part of the authorisation assessment, CAs carefully review the business plan and make sure that it does not rely on reverse solicitation as a modality of doing business. In a going concern, CAs should implement appropriate monitoring of the TCB's activities to make sure that the territorial scope is respected by the TCB.

It is recommended that the activity-by-activity approach be adopted with regard to the objective scope of the authorisation granted to TCBs.

Further EU harmonisation of authorisation requirements should also include a minimum list of uniform grounds for refusing authorisation such as the failure to meet equivalence of the regulatory regime and supervisory practices, the absence of an MoU with the TCHA, an unsatisfactory level of TCCI financial soundness (based on information provided by the TCHA), the TCCI's failure to comply with prudential requirements, including governance arrangements, unsatisfactory TCCI and reputation and increased ML/TF risks.

#### 5.3.4 Assessment of AML/CFT aspects at authorisation

196. TCBs are obliged entities under Directive (EU) 2015/849 (AMLD). This means that the EBA's AML/CFT guidelines and standards apply to TCBs as they do to other obliged entities. Against this background, the proposals focus on AML/CFT-related prudential requirements, since they are not addressed under the AMLD.

##### **Recommendation 7 – AML/CFT aspects at authorisation**

ML/TF risks should be taken into account consistently by CAs for the purposes of granting authorisation as a TCB. This includes the consideration of risks which may expose the EU financial system to ML/TF risks associated with the TCCI and the TC's home jurisdiction.

To this end, CAs should be satisfied that the TC is identified by credible sources, such as mutual evaluations or detailed assessment reports, as having an AML/CFT legal framework that is in line with EU law and the FATF Recommendations and that is applied effectively, including in relation to AML/CFT supervision; or, conversely, that the TC is included in the European Commission's list of 'high-risk third countries' that have strategic deficiencies in their national AML/CFT regimes and pose significant threats to the financial system of the EU pursuant to Article 9(2) of AMLD; or that is otherwise associated with higher ML/TF risk, for example because the TC's law prohibits the implementation of group-wide policies and procedures as described in Commission delegated Regulation (EU) 2019/758, has high levels of predicate offences to money laundering listed in Article 3(4) of Directive (EU) 2015/849, low levels of tax transparency or compliance, or is linked to increased TF risk. CAs should consider how these findings affect the level of ML/TF risk to which their market will be exposed as a result of the possible operation of the TCB in their jurisdiction.

With regards to both the TCB and the TCCI, CAs should assess the ML/TF risks associated with their business model and activities, including the institution's customer base, and the extent to which this gives rise to ML/TF risks; the adequacy of the group-wide systems and controls put in place to comply with applicable AML/CFT obligations; any outsourcing arrangement of AML/CFT-related requirements to TC and the extent to which this enables

the TCB to comply with its AML/CFT obligations and makes possible the effective AML/CFT supervision of the TCB by the EU's competent authorities.

CAs should establish whether cooperation and the meaningful exchange of information between EU AML/CFT supervisors and TC AML/CFT supervisors are possible and effective.

CAs should have the power to refuse the TCB's authorisation on grounds of increased ML/TF risks. CAs should still have the possibility to grant authorisation in situations of increased ML/TF risk if they are reasonably satisfied, based on feedback from the AML/CFT supervisor, that the TCB's AML/CFT systems and controls and governance framework enable it to comply effectively with its AML/CFT obligations. Competent authorities should in that case notify the AML/CFT competent authority to ensure adequate and risk-sensitive AML/CFT supervision of these obliged entities in line with the AMLD.

CAs should review regularly, re-examining the relevant criteria above, whether the basis for granting authorisation to TCBs still exists.

## 5.4 TCB branches: prudential requirements and supervisory practices

197. As a general observation, determining the applicable prudential regime, whilst acknowledging that TCBs may only operate within the MS where they are established, should ensure the sound and prudent management of the TCB, maintain financial stability and prevent potential negative spillovers from the TCB to other MSs by virtue of interconnectedness and financial interlinkages. The uniform introduction of quantitative threshold(s) that, upon supervisory assessment, may trigger the incorporation of the TCB into a subsidiary should also be taken into account as a form of risk prevention and mitigation measure. On the basis of these two considerations, it is recommended that all TCBs be subject to largely the same prudential requirements and that such prudential requirements be calibrated in accordance with the proportionality principle and risk-based approach. The application of the same prudential requirements to TCBs across the EU ensures the comparability of these entities.

### 5.4.1 Capital

198. The results of the stocktaking exercise and the data collection show that the majority of CAs requires TCBs to hold a capital endowment or a minimum initial capital. Other CAs refrain from requiring even these forms of authorisation capital on the assumption that it has no loss absorption capacity (see figures 7 and 8). Admittedly, since the TCB is not a separate legal entity from the TCCI, more robust and autonomous forms of risk-capitalisation (CRR-like) may prove difficult/impossible to determine and implement at the TCB level. For loss absorption purposes, the majority of CAs ultimately rely on the TCCI's capital position, coupled with effective supervision and cooperation with the TCHA.

### **Recommendation 8 – Capital requirements**

In light of the above, it is recommended that TCBs should be required to hold a minimum capital amount at the TCB level in the form, for instance, of a fixed amount to be harmonised across the EU or a percentage of the average liabilities. The calibration of capital requirements and the adoption of transitional arrangements should be determined based on the results of the impact assessment.

Such a minimum capital amount shall serve public interest, protect depositors and help maintain the TCB's financial and liquidity conditions. In the event of the TCB's closure, the minimum capital could be used to pay appropriate claims, if necessary. To ensure the availability of the capital amount in these circumstances, it is recommended that the Level 1 text clarifies that the corresponding amount should be booked/pledged within the host MS and that it should be used to satisfy local creditors.

#### **5.4.2 Liquidity**

199. The results of the stocktaking exercise and the data collection show that a majority of CAs (figure 9) subject TCBs to liquidity requirements. Such liquidity requirements are of particular importance to ensure the sound and prudent management of TCBs, but also to prevent TCBs from relying too much on central banks in cases of crisis. To be efficient, they have to be set and calibrated based on the TCB's business model, types of activities and the integration of the TCB within the TCCI. The effectiveness of cooperation and exchange of information between the CA and the TCHA are also crucial for the implementation of adequate liquidity requirements.

### **Recommendation 9 – Liquidity requirements**

To ensure the safety and soundness of TCBs' operations, application of the CRR LCR framework is recommended<sup>41</sup>. It is recommended that the Level 1 text clarifies that a reserve of HQLA should be booked/pledged within the host MS. The calibration of such a reserve should be determined by an impact assessment. In the event that TCBs cannot answer their liquidity needs, the minimum capital amount booked/pledged in the EU can act as collateral to cover TCBs' commitments.

#### **5.4.3 Internal governance, including booking arrangements**

200. Based on the results of the stocktaking exercise, national laws and practices vis-à-vis internal governance are less dependent on the specific regulatory approach applied – subsidiary-like, branch-specific or simplified. To ensure further uniformity, a closer alignment with the current EU framework is recommended.
201. CAs should have a proper view on the volume of the TCB's activities that is reflected in the TCB's assets. In deciding on the methodology to compute total assets under Article 21b

<sup>41</sup> The applicability of the NSFR framework to TCBs would need to be assessed after its entry into force on 28 June 2021.



CRDV, CAs should account for assets originated by the TCB, be they booked on the balance sheet of the TCCI or on another entity's balance sheet.

**Recommendation 10 – Internal governance, including booking arrangements**

In respect of internal governance arrangements, including outsourcing arrangements and/or delegation to the TCCI, it is recommended that the TCB apply the CRD-CRR framework applicable to credit institutions, as specified in the relevant EBA Guidelines, taking into consideration the specificity of a branch and including the principle of proportionality.

CAs should achieve an adequate understanding of the TCB's global risks and whether they are appropriately managed. To this end, it is recommended that CAs should focus on two aspects: (i) the TCB's governance with regard to booking arrangements, and (ii) associated risk management controls.

Firstly, TCBs should provide clear policies that are validated by the relevant governance body regarding their booking arrangements. These policies should express a clear rationale for booking arrangements as part of the TCB's business strategy and provide sufficient information on the risks generated by the TCB and their place of management. Such policies will allow CAs to determine whether the booking entity has the relevant risk management and governance for its nature and volume of risks.

Secondly, TCBs should also set up adequate ICT systems and controls to ensure that policies are duly complied with. A framework such as this is essential to allow TCBs to properly identify the relocated risks (i.e. a sound IT system will contribute to sufficient transparency as required above) stemming from their activities, but also to assess and monitor the risks associated with the booking arrangements they put in place.

In practice, and considering the size, complexity of activities and significance of booking arrangements of the TCBs, CAs could periodically request an independent report from TCBs regarding the implementation of the above-mentioned requirements.

#### 5.4.4 Reporting requirements

202. Minimum harmonised reporting requirements are essential to ensure the comparability of TCBs established in different MSs.

**Recommendation 11 – Reporting requirements**

To this end, it is recommended that national reporting requirements be replaced by, as a minimum, common core reporting requirements.

Such minimum core of reporting requirements should cover: applicable FinRep data; COREP data – to the extent applicable having regard to the applied prudential requirements and to the activities carried out by the TCB; annual reports of the TCB/TCCI. In this latter regard, the CA should in particular receive all the information necessary relating to the TCCI to provide comfort about the level of its capitalisation, compliance with prudential requirements and be informed of the risks that may impact the soundness of the TCB.

#### 5.4.5 Ongoing supervision

203. Appropriate practices for ongoing supervision should be ensured in accordance with the proportionality principle and risk-based approach.

##### **Recommendation 12 – Ongoing supervision**

It is recommended that CAs should follow a risk-based and proportionate approach to make sure that TCBs comply with the applicable prudential requirements on an ongoing basis (in line with recommendations 8 – 10) and that the territorial scope of the authorisation is respected.

In order to ensure appropriate and convergent supervisory practices of TCBs across the EU, the application of the EBA Guidelines on the Supervisory Review and Evaluation Process as applicable, is recommended.

#### 5.4.6 Credibility and feasibility of crisis management solutions

204. New letter (g) of Article 47(1a) requires TCBs to provide information at least annually on recovery plans covering the branch without prescribing the type of information required. Currently, the EU framework does not envisage any requirements for recovery planning at the TCB level.

##### **Recommendation 13 – Credibility and feasibility of crisis management solutions**

It is therefore recommended to proceed as follows:

Where TCBs are covered by the TCCI recovery plan and therefore fall within the scope of application of Article 47(1a) CRD, CAs should receive information from the TCB on the content of the group recovery plan and be satisfied with the treatment therein of the TCB.

Where TCBs are not covered by the TCCI recovery plan, notably in cases where TCCIs are not subject to recovery requirements, they should provide the CA with alternative recovery arrangements endorsed by the TCCI. Alternative arrangements could take the shape of an engagement letter from the TCCI. Those arrangements should be developed in accordance with proportionality requirements.

CAs should analyse information provided by the TCBs. Based on the analysis performed, competent authorities may, at any time, require additional information, notably in the form of an individual wind-down plan at the TCB level in accordance with proportionality requirements.

#### 5.4.7 AML/CFT supervision

##### **Recommendation 14 – AML supervision**

AML/CFT supervisors should supervise TCBs as they do other obliged entities. There are, however, additional steps that they should take in this context to ensure that ML/TF risks specific to the TC, and the TCCI's activities, are reflected in the TCB's ML/TF risk assessment; and to put in place and apply effective processes to facilitate cooperation and information

exchange with TC (AML/CFT) authorities. This is crucial to ensure effective AML/CFT supervision of TCBs in line with the ESAs's Joint Guidelines on Risk-Based AML/CFT Supervision<sup>42</sup>.

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<sup>42</sup> Available at <https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money/guidelines-on-risk-based-supervision> . These Guidelines are currently under review, the Consultation Paper is available at [EBA consults on changes to its Guidelines on Risk-based AML/CFT supervision | European Banking Authority \(europa.eu\)](#)



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