SwissFinanceCouncil
Fostering International Dialogue

CRD VI Commission proposal on Third Country Branches (TCB): Position on market access, booking , liquidity and authorisation requirements (Art 47 and 48 CRD VI)

Introduction

The EU Banking Package includes, alongside measures to implement remaining elements of the Basel III standard, proposals for a wide-ranging harmonisation of the framework for providing banking services by third country providers into the EU. More specifically, the newly proposed Article 21c (1) of the amended CRD foresees that, in the future, non-EU firms must establish a physical presence within the EU Single Market if such firms intend to provide banking services to EU-domiciled clients and counterparties (except on a reverse solicitation basis in accordance with Article 21c (2) & (3)). In addition, the European Commission's (EC) proposal introduces a harmonised framework for EU branches of non-EU firms carrying on banking activities within the EU. Such branches would be subject to new minimum authorisation and supervision rules and would, moreover, be prohibited from conducting cross-border activities across other Member States (no passporting rights).

Specific considerations

An open strategic autonomy without national ring fencing

First and most fundamentally, trust must be reinforced among supervisory authorities to eliminate national ring-fencing practices at EU level and at global level. Trust is built up if supervisory authorities are mutually confident in the supervisory outcome when assessing banks. This requires **consistent application of global standards** and a transparent and open dialogue in multijurisdictional colleges, such as Joint Supervisory Teams and resolution colleges. **Second, the creation of a single market for banking and investment services** must be sped up. A well-regulated and competitive economy such as the EU's should not, and need not, be subject to national ring-fencing practices.

Therefore, efforts to deliver **open strategic autonomy should focus first and foremost on creating an efficient EU single market for financial services.** This would create more risk management capacity within the European financial system, including within deeper EU capital markets, and render the EU a more attractive place to invest, for the benefit of consumers, corporates, investors and its banking sector. Making market access for third country banks more burdensome or eliminating possibilities for cross-border business would disadvantage EU consumers, entrepreneurs, corporates and investors wishing to access global capital and international markets. It would also reduce the quality and level of competition in the EU financial services market and could reduce the overall resilience of the EU economy.

Article 21 c and 47 CRD VI

We are **concerned by the proposed introduction of a branch requirement in the EU banking package** (CRD6), which would require third country banks to establish a physical presence for the provision of any of the 15 listed financial services in CRD Annex 1 in an EU Member State. This is a fundamental change to the current regime that puts into question **the cross-border provision of banking services** and **existing national market access agreements.**

The **current drafting would lead to a series of impracticalities** that would be difficult to overcome. For example, it is not practical or economically viable for third country institutions to establish a branch in every member state in which they wish to provide services. This would unnecessarily limit liquidity and consumer options, particularly in less developed markets within the EU, with likely adverse consequences for the competitive landscape that would be to the detriment of EU-based corporates and entrepreneurs, including fewer options for raising finance, managing risk and making cross-border payments and investments. Requiring institutions to **operate on a reverse solicitation basis** would, like requiring a physical presence, **not deliver the same level of competition or market breadth of existing cross-border arrangements.**

It is fully understandable that the **EU wants to mitigate any risks to financial stability** that may arise from cross-border financial activity. But there doesn't need to be a trade-off between allowing open markets and ensuring financial stability. A **higher level of harmonisation and the maintenance of financial stability could be achieved in many ways,** but shutting down EU borders and imposing harsh 'localisation' requirements on firms wishing to support the EU economy does not seem appropriate or in the interest of EU firms and households. We rather believe that, if necessary, than only core banking services should trigger the establishment of a physical presence. **Core banking should not trigger the establishment of a physical presence if those activities are necessary to carry out MiFID services and other non-core banking services. Wholesale lending does not require a banking license in all Member States.** Consequently, only lending to consumers, which benefit from a higher level of protection, should be subject to the branch requirement. On the contrary, **corporates should not be restricted to obtain lending only from banks with an establishment in the EU. Corporates need access to global financial services.** Also, it should be made clear, that intra-group and inter-dealer relationships should be exempt from triggering a branch requirement.

Booking requirements, liquidity and authorisation

Regarding **booking requirements**, we agree that the branch needs to have a detailed register, but suggest, that assets may be managed by other entities within the group, consistent with the provisions set out in Article 48 i (4) (b).

In addition, according to Article 48f of the proposal, liquid assets held by TCBs must be deposited in an escrow account pledged in favour of the resolution authority. However, the **pledge requirement does not seem compatible with the ultimate objective of liquidity requirements**, i.e. to cover and anticipate potential outflows. In the same vein, the pledge would lead to the relevant assets as being considered to be "encumbered" and does prevent their eligibility for the purpose of meeting the Liquidity Coverage Ratio as per the CRR. These provisions are not fully coherent and need to be amended. Therefore, we **suggest removing the obligation set out in paragraph 3 of the proposed Article 48f.**

We also suggest **allowing for a more proportionate and efficient authorisation process** for those instances where third country banks have recently established branches in the EU. Guidance from the EBA in this area would facilitate efficient re-authorisation processes in a prudent manner**.**

Finally, we argue to attribute to national competent authorities the **discretion to waive or partially waive liquidity requirements** for branches in situations where the qualifying or non-qualifying assessment has yet to be undertaken.

*****