SwissFinanceCouncil
Fostering International Dialogue

Commissioner Mairead McGuinness
European Commissioner for Financial Stability, Financial
Services and the Capital Markets Union
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

Mr José Manuel Campa
Chairperson European Banking Authority
20 Avenue André Prothin, Europlaza
92927 Paris
France

Brussels, 14 September 2021

Dear Commissioner McGuinness,
Dear Mr Campa,

We, the undersigned associations, write to you following the publication by the European Banking Authority (EBA) of its report to the European Parliament, the Council and Commission on the treatment of incoming third country branches (TCBs).

We are groups representing institutions headquartered in international jurisdictions who are deeply committed to, and invested in, the European Union.

We highly appreciate the EBA and the European Commission's efforts towards further harmonising the EU's supervisory regime for TCBs. While we understand the rationale behind the EBA's work, in particular the desire to address divergences in regulatory and supervisory approaches across Member States, some of the recommendations could provide disproportionate solutions given the potential minimal risks associated with TCBs – which account for less than 2% of total EU banking assets.[1] In particular, we have serious concerns with the recommendations regarding subsidiarisation and the application of CRR capital and liquidity requirements to TCBs. We also note that the report does not explore in depth the many benefits TCBs bring to businesses, infrastructure projects and the EU economy as a whole. Before proceeding with any of the recommendations, an in-depth cost-benefit analysis should be conducted.

TCB Business Model in the EU

Wholesale, branch-based banking – both within the EU and globally – contributes significantly to the financing of EU and non-EU companies and enhances competition, global connectivity, market diversity and access to deep pools of

[1] Calculated based on figures included in EBA report on the treatment of incoming TCBS and the 2019 ECB numbers on size of the banking sector:https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1015664/Report%20on%20third%20country%20branches.pdf & https://www.ebf.eu/facts-and-figures/banking-sector-performance/

capital and liquidity. TCBs are utilised for the purpose of business strategy, operational efficiency and group-wide risk management, and are primarily about conducting wholesale – instead of retail – business. Through access to TCBs, EU businesses benefit from wider pools of capital and liquidity, which contributes to EU financial stability and reduced costs for businesses and consumers. We therefore urge policymakers to consider the many benefits of the TCB model, including:

- **TCBs' ability to channel global capital flows** into financing European infrastructure projects and businesses. This provides important diversification of funding sources for the EU economy, which is predominantly bank-based, and will be of great importance in financing the COVID recovery.

- **TCBs' role in** financing companies through **providing loans and underwriting investment grade and high yield debt issuance and equity**. TCBs often facilitate larger transactions and can deploy capital and liquidity more efficiently and more quickly than subsidiaries, with significant operational benefits and reduced transaction costs. Restrictions risk reducing competition and funding to EU corporates and multinational corporates operating in the EU and introducing concentration risk to the system. Enabling the use of the broader group's balance sheet can provide greater financial resilience for transactions and enhance credit quality, thereby reducing costs and risk to the customer and allowing for risks to be managed within the jurisdiction most appropriate for the risk characteristics of the transaction in a centralized manner.

- **TCBs are able to access international payments systems and central bank facilities** to ease operations in multi-currency markets, which lowers costs for EU clients.

Supervision of TCBs in the EU

TCBs do not pose an inherent risk to the EU financial system, given they are integrated in the resolution and recovery plans of the home entity, and are not established with a purpose of regulatory arbitrage. Under Basel standards, TCBs are subject to robust home country regulatory requirements based on international standards in addition to existing local EU branch regulation. Under the EU's single rulebook, CRD V brings more visibility to branch regulators about group recovery plans and requires a level of branch supervision on a number of issues including liquidity, own funds, depositor protection, risk management and governance arrangements. It should be also noted that the Supervisory Colleges and Crisis Management Groups (CMGs) for Global Systemically Important Banks (G-SIBs) are working to enhance transparency, resilience and resolvability.

We caution against requirements in relation to the subsidiarisation of branches, or proposals to automatically apply requirements that would de facto have a similar impact (such as imposing capital and liquidity requirements). Such requirements will be inconsistent with the fact that the TCB is an integral part of the parent legal entity, and is therefore already taken into account in setting capital and liquidity requirements for the legal entity at large. Any such requirements risk having a disproportionate impact which could diminish the benefits of TCBs. Any requirements should be subject to full consultation with stakeholders and only be undertaken on a case-by-case basis where there is evidenced failure of branch supervision, by the home country supervisor, while clearly understanding the adverse effects for end-users and financial stability. Any measures should be targeted to the perceived failing, and regulators should consider whether less intrusive interventions could remedy such concerns.

At the very least, TCBs of G-SIBs that are subject to the Financial Stability Board's standards on recovery and resolution – which includes being subject to supervisory colleges and CMGs – should have such oversight requirements taken into account when assessing any potential risks such TCBs might pose. We are concerned that the recommendations by the EBA overlook substantial progress and efforts towards international cooperation on

the supervision and crisis management of G-SIBs. We recommend that **any possible proposal be modified in a manner that is more consistent with post Global Financial Crisis reforms and the G20 initiatives for addressing market fragmentation**.

Regulatory Considerations

Possible proposals should also take into consideration the widespread use of branching across most major global jurisdictions. EU banks primarily utilise branching in non-EU jurisdictions to facilitate client transactions. For some of the largest EU-headquartered banks operating in the US, a majority of assets are held in branches and all EU-headquartered banks operating in Japan are engaged in banking business through branches. The application of a more intrusive regulatory framework for TCBs than for branches of EU banks creates level playing field concerns and risks distorting the EU single market.

We urge careful examination of regulatory and supervisory treatment of TCBs with the aim of achieving a proportionate regulatory treatment that enables this important means of conducting business to continue. Ensuring that the ECB and other supervisory authorities have appropriate visibility over TCB activities is critical. Proportionate supervisory and/or regulatory measures aimed at ensuring supervisory visibility of branch activities and risks should be pursued before exploring structural measures which could negatively impact funding for businesses and the European economy, or that could trigger a global regulatory trend towards subsidiarisation that would undermine the benefits of branches. Given that the EU's intermediate parent undertakings (IPUs) must be established by the end of 2023, authorities should wait and assess whether the IPU framework is working as intended before layering on additional requirements for TCBs. The EU should avoid establishing a new framework before implementing the already planned revisions to the existing framework. **Enhancements to, and the possible aggregation of, supervisory reporting at the EU level to address divergences could also be explored**.

As noted at the outset, our institutions are highly invested in, and committed to, the EU. We are keen to work with EU policymakers to find policy outcomes that underpin stable, long-term financing for European business and economic growth in the region. We remain at your disposal should you wish to discuss this issue and look forward to contributing collaboratively to policy reforms in the future.

Yours sincerely,

American Chamber of Commerce to the European Union (AmCham EU)
Bank Policy Institute (BPI)
Japanese Bankers Association (JBA)
Swiss Finance Council