REPORT TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN COMMISSION ON THE EXEMPTION OF THIRD COUNTRY UNDERTAKINGS FROM THE REQUIREMENT TO SET-UP A BRANCH FOR THE PROVISION OF BANKING SERVICES TO EU FINANCIAL SECTOR ENTITIES

ARTICLE 21C(6) OF DIRECTIVE 2013/36/EU

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List of abbreviations

AIF	Alternative investment fund
AIFMD	Directive 2011/61/EU
CRD	Directive 2013/13/EU
CRDVI	Directive (EU) 2024/1619 amending Directive 2013/36/EU
CRR	Regulation (EU) N. 575/2013
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
FSE	Financial sector entity
EU FSE	EU financial sector entity
MiCAR	Regulation (EU) 2023/1114
MMF	Money market funds
MMF Regulation	Regulation (EU) 2017/1131
NBFI	Non-bank financial institutions
Non-bank PSP	Payment service provider other than a bank as defined in Article 1(1) of EU 2015/2366
TCCI	Third country credit institution
TCU	Third country undertaking
TCG	Third country group
UCITS Directive	Directive 2009/65/EC on undertakings for collective investment in transferable securities

Executive summary

The Report develops the mandate conferred by Article 21c(6) CRDVI to the EBA, in consultation with ESMA and EIOPA, to assess whether it is opportune to extend the possibility for third country undertakings to provide core banking services directly from third countries – i.e. without a branch in the Union - not only to EU credit institutions, but to any EU FSEs, having regard to financial stability and EU competitiveness considerations.

To fulfil the mandate, EBA has carried out, in liaison with ESMA and EIOPA, a quantitative analysis of the available supervisory data concerning the core banking services provided from third country undertakings to EU FSEs. The quantitative analysis has been complemented by qualitative anecdotal evidence collected via direct engagement with stakeholders and focusing on the types of the affected core banking services and the impact of the expected prohibition of cross-border provision of services on EU FSEs.

The concluding remarks have been built up based on the combined analysis of the quantitative and qualitative information.

Several factors make it difficult to reach a EU comprehensive and holistic view of the current state of play of the inflow of core banking services directly from third countries and of the impact of the prohibition set out in Article 21c CRDVI. For instance, the absence of a harmonised CRD external perimeter due to the lack of a uniform notion of core banking services, the limited availability of data about EU FSEs, the difficulties in identifying the extent to which existing business practices would make use of core banking services or fit into existing exemptions or carve outs under Article 21c CRDVI.

The purpose of Article 21c CRDVI is to regulate when the establishment of a TCB is required for the provision of core banking services by TCCIs or TCUs to counterparties established in the EU. However, exemptions and carve outs expressly envisaged therein provide a degree of flexibility in the articulation of such requirement and may provide an adequate solution to meet the demand of such core banking services.

Notably, the requirement to establish a TCB in the relevant MS does not apply where the inter-bank or the intra-group exemptions apply. Additionally, adequate protection of existing contractual rights is granted to facilitate the transition to the new regime; furthermore, the MiFID carve out makes the provision of MiFID investment and related ancillary services unaffected by the new regime set out in the CRDVI.

The establishment of a TCB is not required either in case of reverse solicitation, i.e. when the core banking service is provided by an undertaking established in a third country at the own exclusive initiative of the EU client or counterparty. This makes marketing activities by the TCCI/TCU incompatible with reverse solicitation, also in relation to the provision of “other categories of products, activities or services than those that the client or counterparty had solicited”. Also, the intermediation of “an entity acting on […] behalf [of the TCU] or having close links with such third country undertaking or through any other person acting on behalf of such undertaking” excludes the application of such an exemption.

The EBA has engaged with some TCCIs and EU FSE representatives which have drawn attention to the potential impact of Article 21c CRDVI on the costs and structuring of their operations. In particular, focus has been placed on the following aspects[1]:

- potential increase in costs or execution delay for non-bank PSPs of the clearing of payments in foreign currencies (USD in particular) where the provision of the core banking services entails the addition of an existing EU intermediary (TCB or subsidiary) in the payment chain between the non-bank PSP and the TCCI. Similar concerns on potential cost increase have been raised in relation to operations involving IFs. Considering the different treatment between EU FSEs and EU credit institutions, which are still allowed to receive core banking services from TCCIs/TCUs directly from third countries, concerns about unlevel playing field between credit institutions and EU FSEs carrying out similar activities have also been raised;

- lack of clarity on the application of Article 21c(4) – MiFID carveout – to core banking services when they are connected to safekeeping and administration of financial instruments services.

On the first point, the EBA notes – as recalled above - that Article 21c CRDVI provides flexibility to EU FSEs that remain free to solicit core banking services from TCCIs/TCUs or may rely on services provided by TCBs or EU subsidiaries already established. In addition, the EBA notes that the elements to assess the potential costs increase and the actual impact and the effect on the competitiveness on the EU FSEs are limited and anecdotal, and based on the collected information, they do not seem to point to materiality but may need to be further monitored.

Concerning the second point (core banking services connected to safekeeping and the administration of financial instrument services), it is clear that Article 21c CRD concerns the provision of core banking services only in cases not covered by the MiFID regime[2].In the light of the above considerations Article 21c CRDVI provides flexibility – i.e. combination of exemptions and carve outs - to EU FSEs business needs to receive core banking services where the third country undertaking has no TCB in the relevant MS (or subsidiary in the EU). Based on the quantitative and qualitative analysis performed, there is no clear case for an extension of such flexibility.

However, the EBA notes that Article 21c does not expressly address the interaction with those UCITS and AIFMD provisions expressly entitling the concerned EU FSEs to receive core banking services for their ongoing operationality in third countries in accordance with their business model. Reference is made in particular to placing deposits in third country banks as eligible investments (Article 12 MMF Regulation or Article 50(1)(e) UCITS Directive); to opening of cash accounts with third country banks (Article 21(7) AIFMD); or to the delegation of the safe keeping of assets to sub-custodians (Article 21(11) of the AIFMD and Article 22a of the UCITS Directive) to the extent the latter also entail the provision cross-border core banking services such as taking of deposits or granting overdraft facilities to EU funds or asset management companies. The Q&A

[1] For more details, see Section 2.3.

[2] For instance, deposit taking or lending services provided by TCCI/TCUs connected to custody services provided on a standalone basis (i.e. not in as much as ancillary to a MiFID investment services).

tool may be an adequate support to competent authorities in their supervisory tasks by clarifying in particular such interaction.

1. The prohibition of providing banking services directly from third countries and its exceptions

1.1 Provision of banking services: requirement of TCB presence in the EU and prohibition of direct provision of core banking services from third countries

1. Article 21c CRDVI clarifies that third country credit institutions ('TCCIs') or third country undertakings established in third countries have to set-up a TCB, to commence or continue provide core banking services in the relevant Member State, unless specific exemptions or carve outs set out in that provision apply.
2. To put it differently, Article 21c CRDVI clarifies the general prohibition of direct provision of core banking services into the Union directly from third countries - i.e. without a branch or a subsidiary in the Union[3].
3. Three exemptions are envisaged (Article 21c(2) CRDVI), allowing the direct provision of core banking services into the Union directly from third countries:
    a) reverse solicitation;
    b) provision to credit institutions;
    c) provision to an undertaking belonging to the same group of the third country undertaking.
4. The core banking services captured by Article 21c CRDVI are those listed in n. 1, 2, and 6 of Annex I CRD (collectively 'core banking services')[4], namely:
    i. taking deposits and other repayable funds;
    ii. lending, including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting); and
    iii. guarantees and commitments.
5. Save where any of the three exemptions above applies, the establishment of a TCB is required to provide core banking services in the EU.
6. More specifically, Article 47(2) CRDVI provides that the establishment of a TCB for granting loans and for the provision of guarantees and commitments (services n. 2 and 6 Annex I CRD)

[3] See also recital (5) of Directive (EU) 2024/1619: "The provision of core banking services listed in Annex I, points 1, 2 and 6, to Directive 2013/36/EU should be made conditional on an explicit and harmonised authorisation requirement in Union law, specifying that undertakings established in a third country which seek to provide such core banking services in the Union should at least establish a branch in a Member State and that such branch should be authorised in accordance with Union law, unless the undertaking wishes to provide banking services in the Union through a subsidiary".

[4] See Article 47(1) of the CRD. The wording 'core banking services' may be fund in recital (5) of the CRD6.

is required when the undertaking established in a third country is an entity that would meet the definition of credit institution, including by fulfilling the criteria set out in point (1)(b) of Article 4(1) of the CRR ('third country credit institution' or 'TCCI'). Where the core banking service is the taking of deposits or of other repayable funds (service n. 1 of Annex I CRD), the establishment of a TCB is required when it is provided by a TCCI or by any undertaking in a third country, (collectively 'TCU').

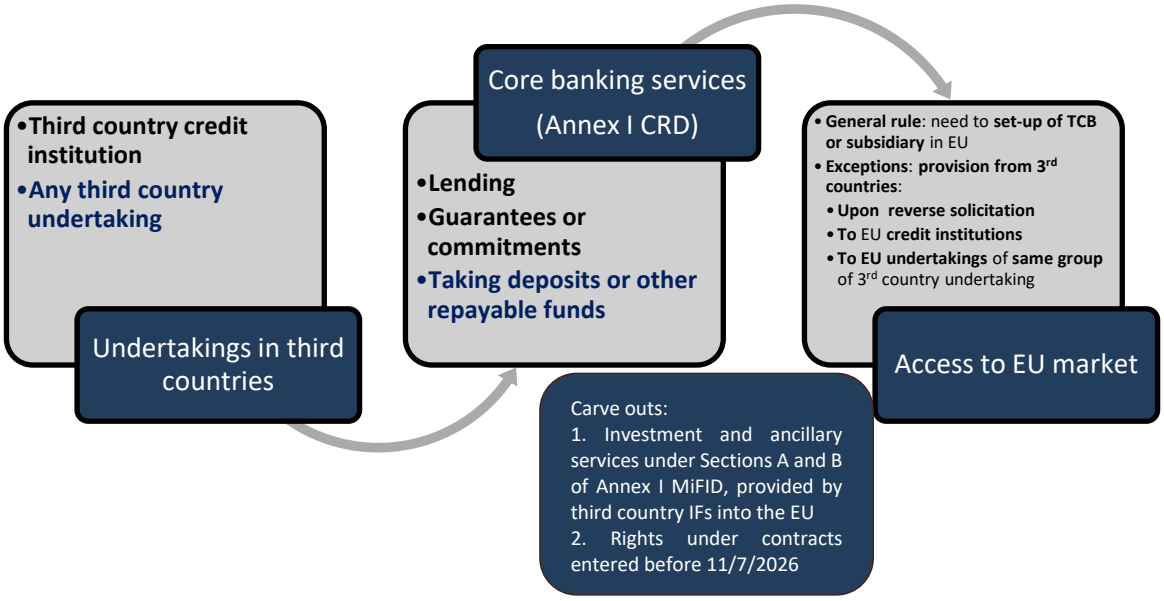
7. The CRDVI lays down some clarification on the scope of reverse solicitation and its limits[5]. To avoid circumvention risks, its operationality is excluded where the TCU solicits a client or counterparty, or a potential client or counterparty "through an entity acting on its own behalf or having close links with such third-country undertaking or through any other person acting on behalf of such undertaking" (Article 21c(2), second sub-paragraph, CRDVI). With regard to the services offered, the scope of reverse solicitation is limited to the categories of products, activities or services solicited by the client or counterparty, however it covers "any services, activities or products necessary for, or closely related to the provision of the service, product or activity originally solicited by the client or counterparty, including where such closely related services, activities or products are provided subsequently to those originally solicited" (Article 21c(3) CRDVI).

8. In addition to the exemptions listed in paragraph (2), Article 21c CRDVI carves out other circumstances from the requirement to establish a TCB, namely the case of:

   - the provision from third countries into the Union, of services or activities listed in Annex I, Section A, to Directive 2014/65/EU ('MIFID II'), including any accommodating ancillary services, such as related deposit taking or the granting of credit or loans the purpose of which is to provide services under that Directive (Article 21c(4) and 47(2) CRD6). To note that the framework concerning the provision of MiFID services and activities by third-country firms to EU clients (established under Articles 46 to 49 of MiFIR and Articles 39 to 43 of MiFID II) are unaffected by the CRD regime and are therefore to be interpreted autonomously from the CRD provisions.
   - preservation of EU clients' acquired rights to the provision of core banking services pursuant to existing contracts entered into by 11 July 2026 (Article 21c(5) CRD6). As clarified in recital (6) CRDVI, such safeguard is aimed at "facilitating the transition to implementation of the [CRDVI], and should be narrowly framed to avoid instances of circumvention" [6].

[5] Article 21c(2), second and third subparagraph, and Article 21(3).

[6] Recital (6), third period: "When transposing this Directive, Member States should be able to take measures to preserve clients' acquired rights under existing contracts. Such measures should apply solely for the purpose of facilitating the transition to implementation of this Directive, and should be narrowly framed to avoid instances of circumvention".



1.2 Mandate for the Report conferred to the EBA

9. In the light of the overview above, Article 21c(6) CRDVI confers the EBA a mandate to develop a Report, whereby the EBA is required:

   "after consulting EIOPA and ESMA, [to] review whether any financial sector entity in addition to credit institutions should be exempted from the requirement to establish a branch for the provision of banking services by third-country undertakings in accordance with this Article. EBA shall submit a report thereon to the European Parliament, to the Council and to the Commission. That report shall take into account financial stability concerns and the impact on the competitiveness of the Union.
   Based on that report, the Commission shall, where appropriate, submit a legislative proposal to the European Parliament and to the Council."

10. Despite its complexity, the mandate has to be interpreted consistently with the general objective of Article 21c CRDVI setting out a prohibition of direct provision of core banking services from third countries, save for the exceptions and carve outs. The mandate has therefore to be interpreted as requesting the EBA, after consulting with EIOPA and ESMA, to examine whether the exemption from setting-up a TCB for the provision of core banking services may be envisaged not only when such services are provided to credit institutions (Article 21c(2), point (b) CRDVI), but also when they are provided to any financial sector entity established in the EU. For purpose of such assessment, the EBA has to take into account financial stability concerns and the impact on the competitiveness of the Union.

1.2.1 Scope of the mandate: "Financial sector entity"

11. The scope of the mandate is broad and covers the whole financial sector. The EBA, in consultation with EIOPA and ESMA, has to examine the direct provision of core banking services by TCUs to any "financial sector entity" ('FSE'), to be interpreted in accordance with the definition set out in CRR3[7].

12. That notion results from the combined reading of "financial institution" ([8], with that of "asset management company"[9] which is referred to.

13. For purposes of this Report, FSEs include investment firms, asset management companies, insurance and reinsurance undertakings, payment institutions, e-money institutions, issuers of asset-referenced tokens, crypto-asset service providers. With regard to entities within ESMA's remit, central counterparties, credit rating agencies and trade repositories, among others, are not considered FSEs. As to entities under EIOPA's remit, institutions for occupational retirement provision under Directive (EU) 2016/2341, or insurance distributors are not considered financial sector entities. To note that, regardless of the scope of the definition of FSE, all entities (and natural persons) of a financial or non-financial nature fall within the scope of Article 21c CRDVI. However, only FSEs are covered by the scope of the mandate for this Report.

14. To set the scope of the mandate correctly, some additional considerations are required.

15. It is noted that the definition of "financial sector entity" includes third country undertakings (namely, third-country insurance and reinsurance undertakings and third-country undertakings with business comparable to entities listed in the definition), however such third-country entities have to be considered outside the scope of the mandate of this Report which, in line with the rationale of Article 21c CRDVI, focuses on EU FSEs in as much as recipients of core banking services provided by TCUs directly from third countries.

16. The same approach applies to third-country entities included in the definition of "asset management company". The same applies to the leg of the definition of "asset management company" set-out in point (5) of Article 2 of Directive 2002/87/EC.

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[7] See point (27) of Article 4(1): 'financial sector entity' means any of the following:

(a) an institution; (b) a financial institution; (c) […] [deleted by CRR3]; (d) an insurance undertaking; (e) a third-country insurance undertaking; (f) a reinsurance undertaking; (g) a third-country reinsurance undertaking; (h) an insurance holding company as defined in point (f) of Article 212(1) of Directive 2009/138/EC; (k) an undertaking excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive; (l) a third-country undertaking with a main business comparable to any of the entities referred to in points (a) to (k).

[8] See in point (26) of Article 4(1) of CRR3: "financial institution" means an undertaking that meets both of the following conditions:

(a) it is not an institution, a pure industrial holding company, a securitisation special purpose entity, an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC or a mixed-activity insurance holding company as defined in Article 212(1), point (g), of that Directive, except where a mixed-activity insurance holding company has a subsidiary institution;

(b) it meets one or more of the following conditions:

(i) the principal activity of the undertaking is to acquire or own holdings or to pursue one or more of the activities listed in Annex I, points 2 to 12 and points 15, 16 and 17, to Directive 2013/36/EU, or to pursue one or more of the services or activities listed in Annex I, Section A or B, to Directive 2014/65/EU in relation to financial instruments listed in Annex I, Section C, to Directive 2014/65/EU;

(ii) the undertaking is an investment firm, a mixed financial holding company, an investment holding company, a payment services provider as categorised under Article 1(1), points (a) to (d), of Directive (EU) 2015/2366 of the European Parliament and of the Council, an asset management company or an ancillary services undertaking;".

[9] As set out in point (19) of Article 4(1) CRR.

17. These considerations do not affect the broad scope of the Report, which is expected to cover the whole financial sector. Consistently, the mandate requires the EBA to consult ESMA and EIOPA in respect of the FSEs in their remit and which may be affected by the prohibition of direct provision of core banking services from third countries.

18. In the light of the above, achieving a market representation as comprehensive and realistic as possible of the current state of play of the provision of core banking services directly from third countries to any EU FSE is key to the development of a robust and methodologically sound Report.

19. For this purpose, the EBA has used available supervisory data, also provided by ESMA and EIOPA for entities in their remit, of the EU FSEs concerning exposures to counterparties in third countries.

20. Relevant supervisory data is available only for a small portion of EU FSEs. For the other EU FSEs, the EBA - in consultation with ESMA and EIOPA - has engaged in informal technical discussions with financial stakeholders to collect information and anecdotal evidence in the course of three workshops. From the offer side of the core banking services, it has interacted with non-EU head-quartered banks; from the demand side, with representatives of EU asset management companies, funds and investment firms, insurance and reinsurance companies and pension funds. In parallel, the EBA has exchanged with representatives EU banks, and with representatives of payment and e-money institutions.

1.2.2 Scope of the mandate: core banking services

21. With a view to setting a uniform substantive perimeter of the EU banking market, the CRDVI identifies the core banking services via Annex I CRD.

22. As illustrated by the EBA in previous Reports and Opinions[10], there are national variations as to the interpretation of key aspects of the notion of credit institution (notably deposit, repayable funds and granting credit), similarly the banking services set out in Annex I CRD are not defined in the Level 1. Considering that no relevant changes have occurred since the development of such Reports and Opinions, this Report relies on the analysis and conclusions made in the previous publications and does not further elaborate these notions, also considering that such further elaboration is not part of the current mandate.

[10] EBA Report on the perimeter of credit institutions established in the Member States and the related Opinion (EBA/Op/2014/12), of 27 November 2014, available at https://eba.europa.eu/ebapublishes-an-opinion-on-the-perimeter-of-credit-institutions; EBA Report on other financial intermediaries and regulatory perimeter issues and the related Opinion n (EBA/Op/2017/13), also of 9 November 2017, available at https://eba.europa.eu/ebapublishes-an-opinion-and-report-on-regulatory-perimeter-issues-relating-to-the-crdiv-crr; EBA Opinion (EBA/OP/2020/15) of 18 September 2020 on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation, available at https://www.eba.europa.eu/sites/default/files/document_library/Publications/Opinions/2020/931784/EBA%20Opinion%20on%20elements%20of%20the%20definition%20of%20credit%20institution.pdf

2. State of play of core banking services provided by TCUs directly from third countries

2.1 Relevant supervisory data from financial sector entities within EBA, ESMA and EIOPA's remit

23. As outlined in the previous section, from a methodological perspective, the representation of the current state of play of the direct provision of core banking services from third countries is key to gain an understanding of the phenomenon and of the interests at stake.

24. In respect of the data analysis, the draft Report could only rely on existing supervisory data. An ad hoc data collection could not be launched, considering procedural[11] and time constraints, the uncertainty about the availability of potentially needed data and conclusiveness of the collected data, also given the difficulty to identify suitable data points to exactly correlate to core banking services.

25. In compliance with the mandate, the EBA has liaised with ESMA and EIOPA to check data availability for the EU FSEs subject to their respective remit. The EBA has also examined supervisory data for investment firms subject to its remit.

26. Having regard to the three core banking services captured by the prohibition under Article 21c CRDVI, the breakdown of assets and liabilities by counterparty and by country of the counterparty has been helpful to gain a view of the level of interaction / dependence of EU FSEs from TCUs for specific core banking services.

27. As a preliminary step, a mapping of the available supervisory data that can be related to core banking services that EU FSEs receive from TCUs has been undertaken within EBA, ESMA and EIOPA. Such mapping does not cover data of credit institutions since they are already covered by the exception under point (b) of Article 21c(2) CRDVI, and can receive core banking services directly provided from third countries.

28. As regards entities within the EBA's remit, relevant supervisory data is reported by Class 2 investment firms directly to the EBA. The EBA does not receive relevant data for Class 1 minus (i.e. investment firms subject to CRR) or Class 3 firms (small and non-interconnected). For this reason, these firms are not part of the analysis. Similarly, this data is not received by ESMA. In the light of such limitations, the analysis can only be partial. Similarly, the EBA has no relevant data about payment institutions or e-money institutions.

29. With regard to EU FSEs within ESMA's remit, relevant supervisory data is reported to ESMA by asset management companies in accordance with the Directive 2011/61/EU on Alternative Investment Fund Managers ('AIFMD') and Regulation (EU) 2017/1131 on Money Market

[11] It is noted that proportionality requirements apply to ad hoc data collections and that the EBA, the owner of the mandate, may not autonomously launch data collections vis a vis entities which are not within its remit.

Funds (MMF Regulation). ESMA has no supervisory data on asset management companies or funds (except that reported by MMFs) under Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), therefore the supervisory data available to ESMA only provides a partial market view.

30. An additional clarification is worth with regard to the examined data relating to funds, as a proxy for asset management company, which falls within the definition of EU FSE. Having regard to the scope of the current mandate, covering EU FSEs that are recipient of core banking services from third countries, the data reported by asset managers in relation to the funds under their management are taken into account for purposes of the quantitative market analysis of this Report, considering that: a) the reporting obligation falls on the asset management company, b) the regular business of the asset management company is precisely to manage the fund (collective investment undertaking), as referred to in Article 4(b) of the AIFMD or Article 2 (b) of the UCITS Directive.

31. Furthermore, with regard to data reported by asset management companies under AIFMD, in accordance with Commission Delegated Regulation (EU) 231/2013, AIFMs report at consolidated management level aggregated figures on the assets under management, the five principal markets and the principal instruments in which they trade on behalf of the AIFs managed. For these datapoints, country breakdowns are not available. Information on countries can be found in the AIF data section of the reporting.

32. Similarly, with regard to MMFs, according to Commission Implementing Regulation (EU) 2018/708, asset managers report the templates with the applicable data of each MMF under their management. It is the asset management company, not the fund, that holds the reporting obligation, regardless of the fact that this reporting obligation does not concern any figure for MMF managers, apart from registry information. Conversely, the reporting obligation includes detailed information of the assets of each MMF under management.

33. As a caveat, it needs to be flagged that some data overlapping between AIFs and MMFs could not be avoided, since MMFs can be authorised as AIFs or UCITS and the data examined includes both types of MMFs with no distinction. It was not possible to exclude data relating to MMFs authorised as AIFs due to the lack of identifiers under the AIFMD regime.

34. Regarding EU FSEs within EIOPA's remit, some relevant supervisory data are available for insurance and reinsurance companies. No other relevant data is available to EIOPA or to national competent authorities.

35. The overall analysis of the data shared by ESMA and EIOPA and in possession of the EBA gives an overview of the breakdown by third country of the provider of the core banking services. As it will be illustrated below, this allows the identification of the third countries of 'origin' of the counterparty exposure, that is assumed to correspond to the core banking services directly provided to MMFs, AIFs, IFs, insurance and reinsurance companies.

36. It is noted that the availability of data only concerns a limited typology of financial sector entities and does not cover its whole spectrum. For this reason, the EBA has directly engaged with the relevant stakeholders (non-EU banks, investment firms and investment funds and

insurance companies) in order to collect anecdotical evidence on the impact of the introduction of the prohibition set out in Article 21c CRD VI on their business models.

37. In principle, the available supervisory data that is examined in the sub-sections below may be reconnected to core banking services, as summarized in the table below.

Table 1: summary of available data per main financial sector entity considered in the Report

Type of FSE	Taking deposits and other repayable funds	Lending	Guarantees and commitments
Insurance and reinsurance undertakings and insurance holding companies	Not available	Available data: significant risk exposure	Available data: significant risk exposure
Investment firms	Class 2 IF: cash exposures Class 3: not available Class 1 minus: not available	Not available	Not available
Mixed financial holding company / investment holding company	Included in consolidation or sub-consolidation data of other FSEs, where data on a consolidated basis have been used	Included in consolidation or sub-consolidation data of other FSEs, data on a consolidated basis have been used	Included in consolidation or sub-consolidation data of other FSEs, data on a consolidated basis have been used
Payment institutions and e-money institutions	Not available	Not available	Not available
Asset management companies	No data for asset managers Data on deposit with counterparty n third country available for MMFs Data on principal cash exposure available for EU AIFs No data available for UCITS (except MMF UCITS)	No data for asset managers Data available for EU AIFs No data available for UCITS (including MMFs)	Not available
Ancillary services undertaking	Not available	Not available	Not available

Issuers of asset-referenced tokens or crypto-asset services providers (under MiCAR)	Not available	Not available	Not available

38. Although the table above is a helpful visual support, it represents a high-level correlation effort. Admittedly, the current data does not always allow per se to set an (exact) correlation with the core banking services. Furthermore, even where the correlation is established, it is not always possible to exactly identify the extent to which the measured activities may be considered within or outside the existing exemptions. For instance, core banking services may be provided upon reverse solicitation, an exemption from the requirement to set-up a TCB in the MS where core banking services are intended to be provided (as per Article 21c(1) CRDVI). Such modality of provision is not captured by the data.

39. Similarly, the examined data does not allow to establish the existence of any intra-group relationships between the provider TCU and the beneficiary EU FSE of the core banking services. This intra-group relationship allows the direct provision of core banking services from third countries in accordance with Article 21c(2), point (c) CRDVI.

40. Similarly, based on the data available, it is not possible to assess whether the services received by EU FSEs are covered by the exemption under Article 21c(4) and 47(2) CRDVI, relating to investment services under Section A of Annex I to MiFID, and ancillary services under Section B of Annex I to MiFID.

2.1.1 Data reported by asset managers relating to money market funds (MMFs)

41. This section investigates the breakdown by country of domicile of the deposits of MMFs, as referred to in Article 9(c) of the MMF Regulation[12]. This section focuses on those datapoints with information available on the country of counterparty. From an accounting perspective, such investments are recorded on the asset side of MMFs. These liquid investments are an important component of an MMF's balance sheet, given that EU regulation requires MMFs to maintain certain levels of daily and weekly liquidity.

42. Having regard to the correlation with the core banking services, this analysis assumes that the data refer to MMFs investments in the form of deposits with third country banks as per Article 12 of the MMF Regulation. This provision considers eligible investment also deposits with credit institutions established in a third country, provided they are "subject to prudential rules considered equivalent to those laid down in Union law in accordance with the procedure laid down in Article 107(4) of Regulation (EU) No 575/2013" [13]. However, as observed in

[12] Article 9 of the MMF Regulation concerns the eligible financial assets in which MMFs may invest. Point (c) of Article 9 refers to 'deposits with credit institutions'.

[13] Article 12, Eligible deposits with credit institutions. "A deposit with a credit institution shall be eligible for investment by an MMF provided that all of the following conditions are fulfilled:

(a) the deposit is repayable on demand or is able to be withdrawn at any time;

paragraph 47, such assumption might not be true in all cases; based on the sole raw data it is not possible to exactly determine the underlying service.

43. The analysis is based on ESMA data at end of December 2023 for 250 MMFs domiciled in EU/EEA countries that report aggregated net asset value of EUR 1.4 trillion. Only MMFs from five Member States (FR, GR, IE, LI and LU) report deposit exposures towards TCUs (Figure 1). The third countries that obtain most of the deposit exposures are Great Britain (36% of total deposit exposures towards third countries), followed by United States (30%) and Canada (18%). These exposures in deposits towards counterparties domiciled in third countries represent more than half of total deposits for IE and LU, while they represent 12% for LI and 1% and 2% for French and Greek funds, respectively.

44. In percentage of net asset value, deposits in third countries represent 7% of net asset value (Figure 3), an average underpinned by IE (13% of net assets) and LU (8% of net assets). For the rest of the countries, the share of third country deposits is negligible (2% for LI, 0.6% for GR and 0.02% for FR).

45. While only MMFs domiciled in five EU/EA countries hold deposits in third countries, MMFs domiciled in all EU/EEA countries generally hold deposits in EU/EEA countries. Deposits domiciled in EEA countries represent on average 5% of net asset value of the MMFs, ranging from 5% (DE) to 73% (FI). In all the EU/EEA countries, except FR, GR, IE and LU, the range for deposits held in third countries is lower, ranging from 0% (BE, DE, FI, HU, NL, PT and SI) to 13% (LI). MMFs from all Member States, except those from IE and LU, mainly place their deposits in EU/EEA countries, as evidenced by the fact that deposits in EU/EEA countries are above those domiciled in third countries. The findings above show that there is not a generalised pattern in placing deposits in TCUs. It is noted, however, that FR, LU and IE concentrate most of the MMFs operating in the EU (90%). The practice of placing deposits in non-EEA/EU countries is visible in MMFs domiciled in two EU/EEA countries (IE and LU) and is related to the fact that MMFs domiciled in those two countries have more than half of their exposures denominated in foreign currencies (see Figure 2). This finding is in line with the ESMA report on EU MMF market, which shows that MMFs in LU and IE are mainly denominated in non-EU currencies[14].

(b) the deposit matures in no more than 12 months;

(c) the credit institution has its registered office in a Member State or, where the credit institution has its registered office in a third country, it is subject to prudential rules considered equivalent to those laid down in Union law in accordance with the procedure laid down in Article 107(4) of Regulation (EU) No 575/2013".

A similar provision about the eligibility of deposits with credit institutions, including with third country credit institutions meeting certain requirements, is envisaged for UCITS. A similar provision in envisaged for UCITS. Article 50(1)(f) of Directive 2009/65/EC (UCITSD) provides that "deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the competent authorities of the UCITS home Member State as equivalent to those laid down in Community law".

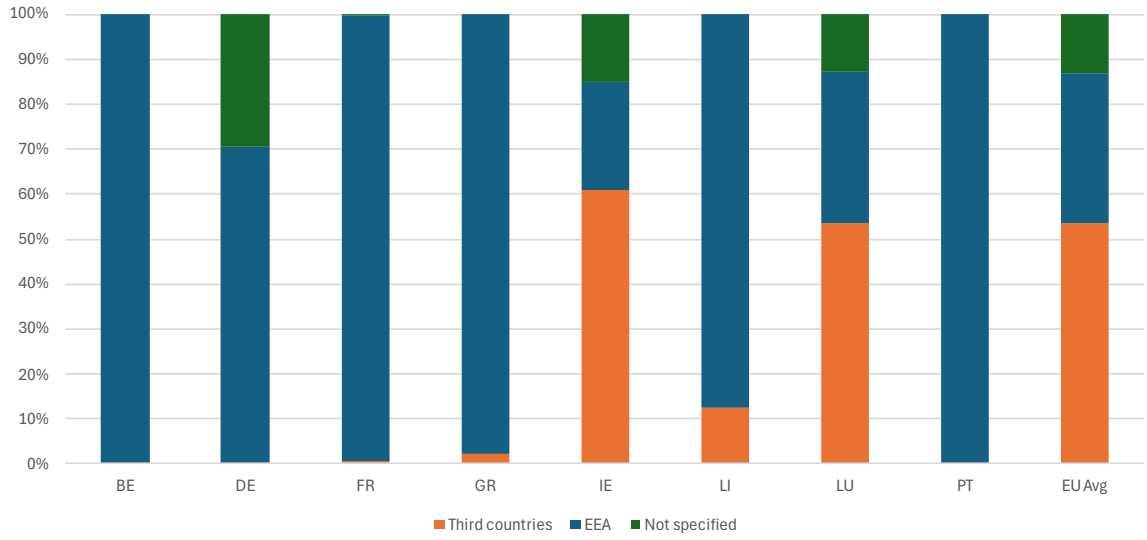
[14] With regard to investors, "Non-EU investors are dominant in Luxembourg and Ireland. Reflecting the importance of MMFs in non-EU currencies, non-EU investors account for 77% of the NAV of Irish MMFs (including 60% from the UK) and 63% for Luxembourg (including 30% from the UK and 10% from the US)", ESMA, EU MMF market 2023, page 5.

46. At least for one of these jurisdictions (IE), this is also to be related to the practice of delegation depositary functions to global sub-custodians[15], requiring liquidity (deposits) for the performance of these services.

47. Also, not all funds domiciled in IE and LU have deposits with third country counterparties, in the case of Ireland is more than 80% but in the case of Luxembourg is less than half (Figure 4).

48. Supervisory data of MMFs provided by ESMA includes only the exposures of MMFs to deposits. No supervisory data is available to ESMA to determine whether and in what measure, MMFs receive guarantees or commitments from TCCIs, therefore no analysis of the provision of these core banking services is carried out herein[16]. It is noted that under Article 9 MMF Regulation, MMFs are prevented from borrowing or lending cash, hence no data is available for this core banking service for MMFs.

Figure 1: Exposures in deposits by residence of the counterparty (third countries, EEA or not specified), breakdown by country of domicile of the MMF, 2023/Q4

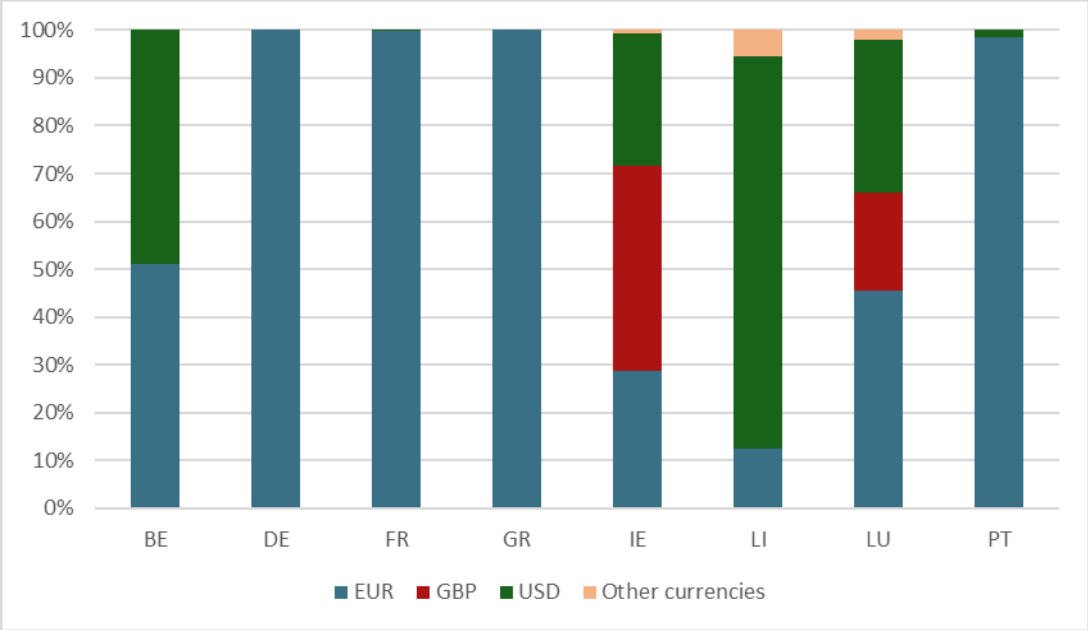


Source: ESMA data on MMFs and EBA calculations. FI, HU, NL, SI are excluded because there are less than three MMFs reporting data in their jurisdiction.

[15] The delegation of depositary function by the depositary to sub-custodians in envisaged in Article 21(11) AIFMD, in combination with Articles 98, 101 and 102(3)(a) of AIFR, or Article 22 UCITS Directive respectively.

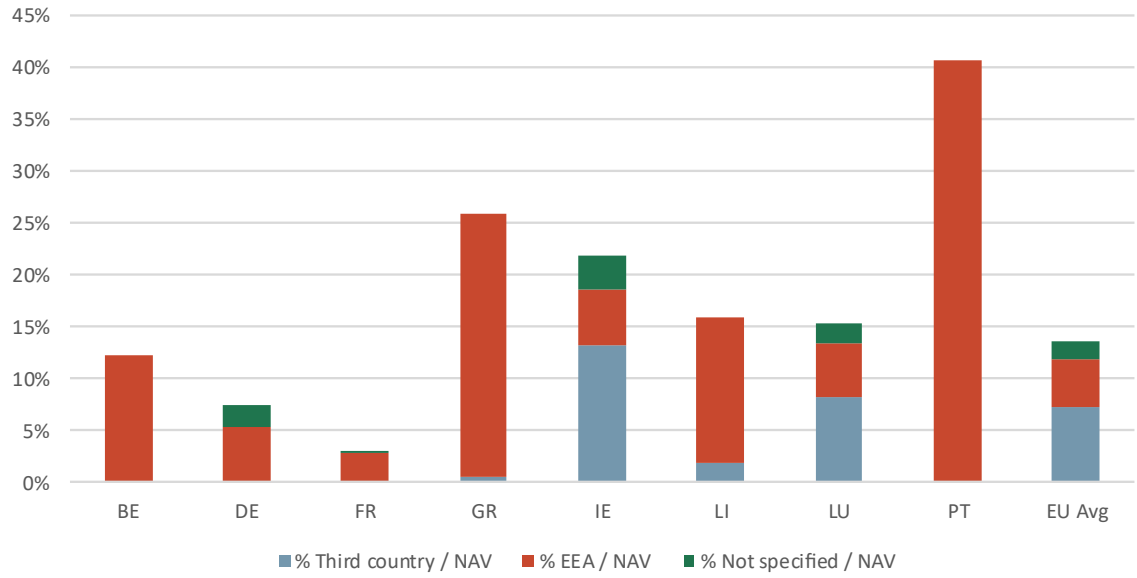
[16] It is noted that for MMFs under the UCITS Directive, Article 7(1), second sub- paragraph, envisages permitted reduction of on own fund requirements based on provision of guarantees. Similarly, Article 9(6) of AIFMD.

Figure 2: Breakdowns by base currency of deposits exposures of MMFs, breakdown by country of domicile of the MMF, 2023/Q4



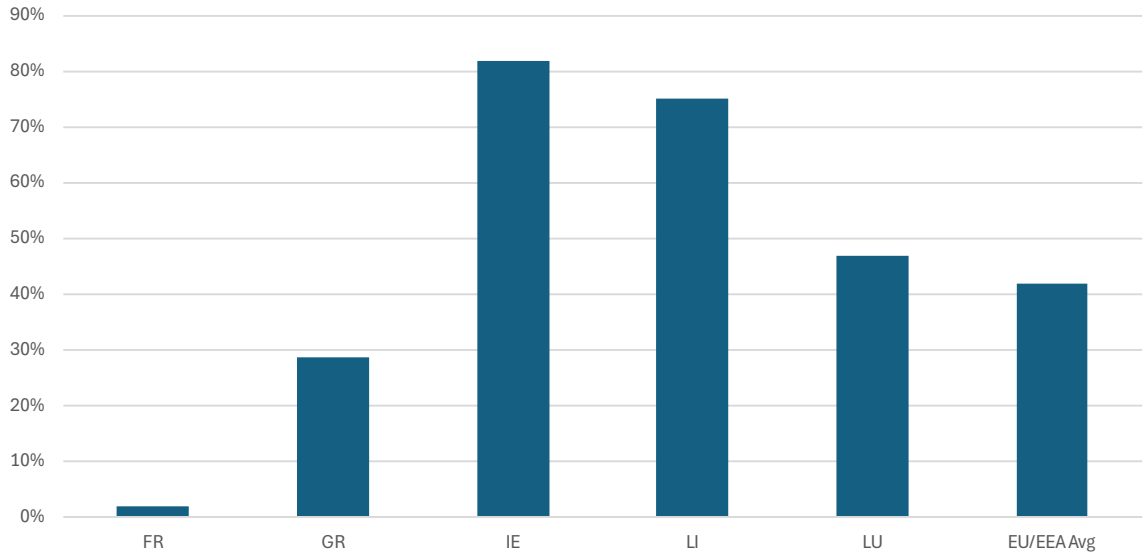
Source: ESMA data and ESMA calculations.

Figure 3: Exposures in deposits by residence of the counterparty (third countries, EEA or not specified), percentage of net asset value, breakdown by country of domicile of the MMF, 2023/Q4



Source: ESMA data on MMFs and EBA calculations. FI, HU, NL, SI are excluded because there are less than three MMFs reporting data in their jurisdiction. EU average shows the breakdown of deposits by residence of the counterparty in percentage of net asset value of all EU MMFs.

Figure 4: Percentage of MMFs reporting deposits into third countries, 2023/Q4



Source: ESMA data on MMFs and EBA calculations. Only countries of domicile of funds with positive amounts of deposits in third countries have been considered in this chart.

2.1.2 Data reported by asset managers relating to alternative investment funds (AIFs)

a. Principal cash exposures of AIFs

49. This section investigates the breakdown by country of domicile of the cash exposures of EU established AIFs. The aim of the section is to know if AIFs domiciled in EU/EEA countries rely on TCUs to place their cash.

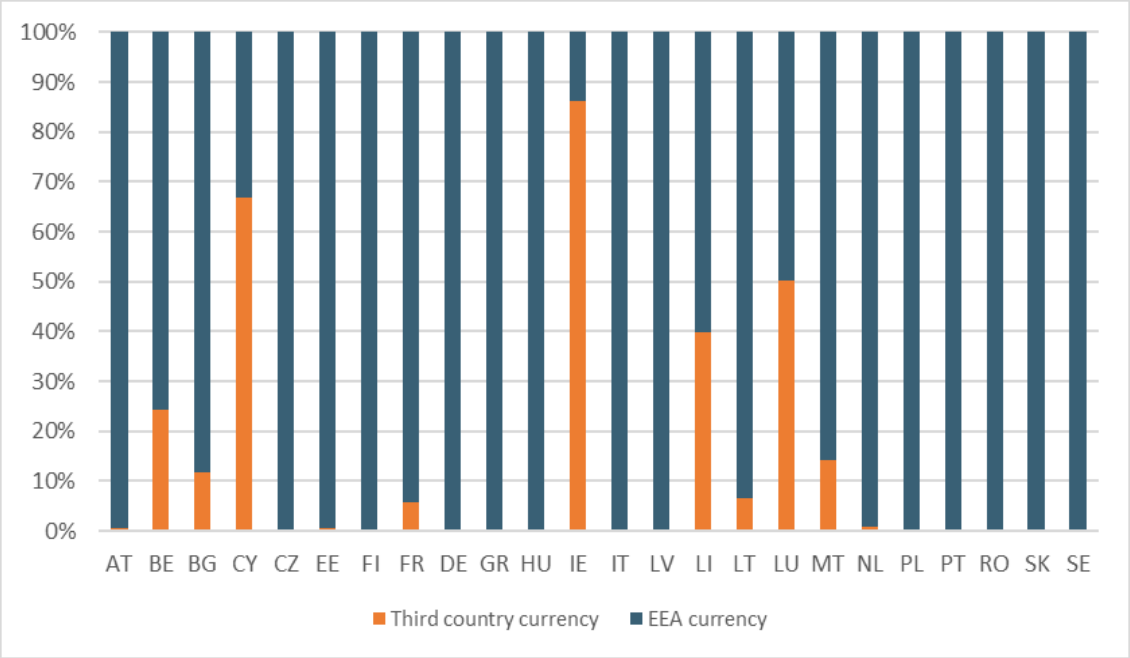
50. The analysis is based on ESMA data as at end December 2023 for 3,087 AIFs in relation to which data of long positions in cash with country of the counterparty of these cash positions informed has been reported. The funds have a total aggregated amount of net asset value of EUR 734bn. The cash exposures with the country of the counterparty informed are available only for 3,087 AIFs out of the 30,795 AIFs that reported long positions in cash, which represents 17% of the total cash exposures. This means that there is no data on the country of the counterparty for 83% of the cash exposure. Only AIFs domiciled in EU/EEA countries have been considered for the analysis.

51. Cash exposures towards TCUs represent 1.72% of total cash exposures (Figure 5), ranging from 0.01% (BE) to 90.42% (IE). Only AIFs established in four Member States have material cash exposures towards TCUs (CY, MT, IE and SE). For the rest, the cash exposures located in EU/EEA countries are well above the cash exposures towards TCUs. For CY, MT and IE, the high share of cash exposures towards non-EEA counterparties may be explained by the currency denomination of those exposures (Figure 6), which are denominated in non-EEA currencies.

Figure 5: Cash exposures, by residence of the counterparty (third countries, EEA), breakdown by country of domicile of the AIF, 2023/Q4

Source: ESMA data on AIFs and EBA calculations. Notes: the figure contains the main cash exposures with the breakdown by country of the counterparty. The cash exposures with the country of the counterparty reported cover 17% of the total cash exposures. Data for NO and SI has been excluded because less than 3 funds report the main cash exposures with the breakdown by country of the counterparty.

Figure 6: Breakdowns by base currency of principal exposures of AIFs, breakdown by country of domicile of the AIF, 2023/Q4



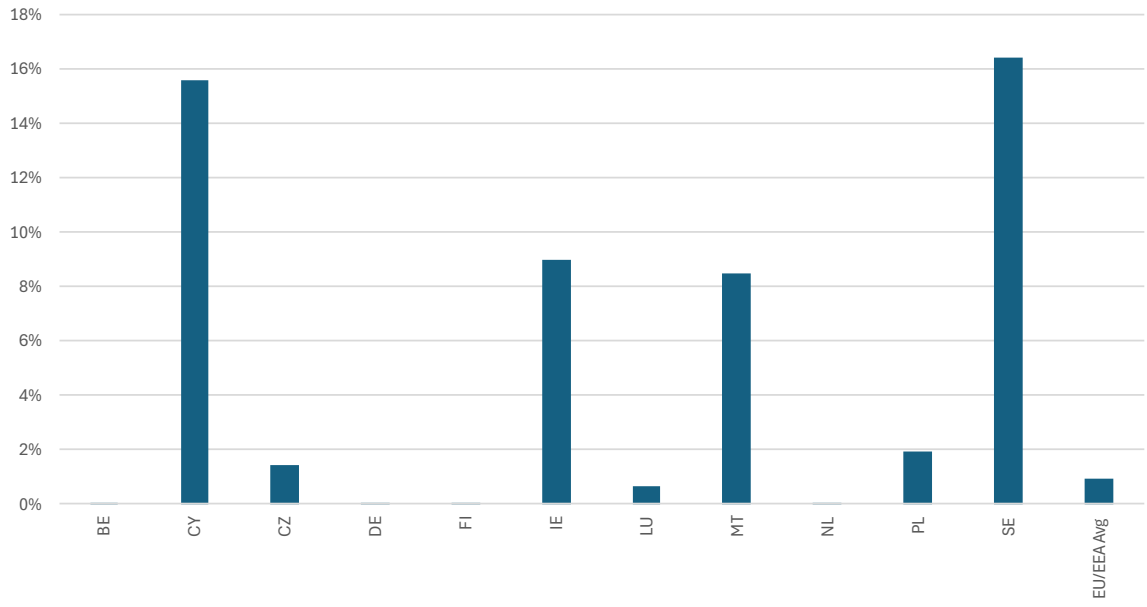
Source: ESMA data and ESMA calculations.

52. In percentage of net asset value, cash exposures towards TCUs represent 0.94% of net asset value[17] (Figure 7), with only CY and SE with cash exposures towards TCUs above 10% of their net asset value.

53. Similarly to MMFs, the cash exposures towards TCUs are concentrated in AIFs established in a few EU/EEA countries. AIFs established in such few EU/EEA countries cover less than a third of the total net asset value of AIFs domiciled in the whole EU/EEA. Therefore, based on these findings, the use of cash services from TCUs is not a generalised service throughout the EU.

54. The sectoral regulations applicable to AIFs allow AIFs to place funds in accounts opened with a central bank, an EU credit institution or a bank authorised in a third country[18]. The data examined does not allow to carry out a qualitative analysis of the AIFs' or AIFM's use of such cash accounts and the needs for some AIFs to place cash with TCUs. However, it may be assumed that such cash accounts amount to the core banking service of taking deposits by the TCU.

Figure 7: Cash exposures by residence of the counterparty (third countries, EU/EEA), percentage of net asset value, breakdown by country of domicile of the AIF, 2023/Q4



[17] This indicator has only been obtained in relation to the sub-set of AIFs that inform the country of the counterparty.

[18] Article 18(1) of the Directive 2006/73/EC, cross-referred to by Commission Delegated Regulation (EU) 231/2013, entails that AIFs may hold cash accounts with "a) a central bank; (b) a credit institution authorised in accordance with Directive 2000/12/EC; (c) a bank authorised in a third country;".

Article 86(a) of the Commission Delegated Regulation (EU) 231/2013 relates to the depositary's obligation to "ensure effective and proper monitoring of the AIF's cash flows and in particular: […] a) ensure that all cash of the AIF is booked in accounts opened with entities referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC in the relevant markets where cash accounts are required for the purposes of the AIF's operations and which are subject to prudential regulation and supervision that has the same effect as Union law, is effectively enforced and is in accordance with the principles laid down in Article 16 of Directive 2006/73/EC; […]".

Source: ESMA data on AIF and EBA calculations. Notes: the figure contains the main cash exposures with the breakdown by country of the counterparty. The cash exposures with the country of the counterparty informed cover 17% of the total cash exposures. The figure only includes the countries with positive cash exposures located in third countries.

b. Main sources of borrowed cash or securities of AIFs

55. This section investigates the breakdown by country of domicile of the main sources of borrowed cash or securities (i.e. counterparties to the financing, lenders) by EU established AIFs. While the previous section focused on the breakdown by country of asset exposures, in order to know the services of cash and deposit management provided by TCUs, the aim of this section is to know if AIFs domiciled in EU/EEA countries rely on TCUs to obtain funding.

56. The analysis is based on ESMA data as at end December 2023 for 38,222 AIFs that reported data of the five main sources of borrowed cash or securities with aggregated net asset value of EUR 8.1 trillion[19]. The five main sources of borrowed cash or securities represent 4.68% of the net asset value as at December 2023. The country is reported for 55% of the amount of the five main sources of borrowed cash or securities.

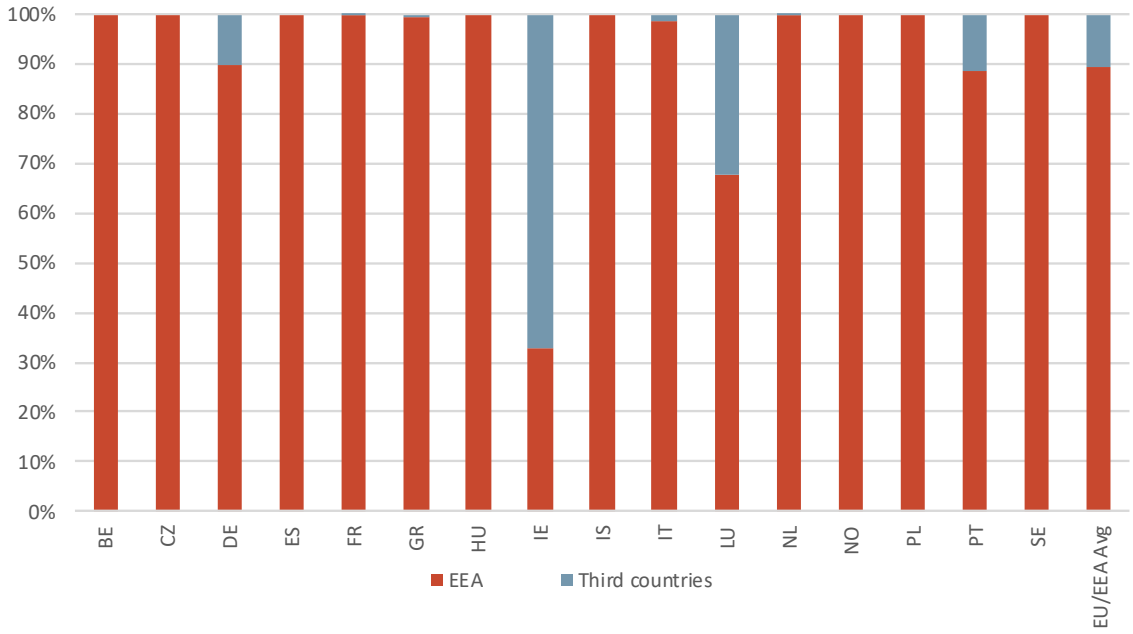
57. TCUs provide 11% (in terms of volume) of the five main sources of borrowed cash or securities with country reported (6% (in terms of volume) of total five main sources of borrowed cash or securities). Only AIFs domiciled in nine EU/EEA countries (out of 19 in respect of which data is available) rely on third countries for the main five sources of borrowed cash or securities. Out of these nine countries, funding from third countries is relevant for IE (67% of the five main sources of borrowed cash or securities with country informed) and LU (32% the five main sources of borrowed cash or securities with country informed), while for the other countries it remains limited (11.4% for PT and 10.3% for DE). The remaining countries have a share of third country funding below 2%.

58. Based on the sole examined data, it is not possible to exactly identify the service provided and the nature of the third country counterparty. It is noted that should this data be reconciled with lending as per n. 2 of Annex I CRD, only the provision of financing by TCCIs, and not by any TCUs, would be captured by the prohibition set out in Article 21c CRD. This circumstance might in principle further reduce the overall exposures towards third countries.

59. No supervisory data is available in relation to the receipt of guarantees and commitments from TCCIs.

[19] Based of the data it is not possible to distinguish between borrowed cash and borrowed securities.

Figure 8: Jurisdictions of the five main sources of borrowed cash or securities, breakdown by country of domicile of the AIF, 2023/Q4



Source: ESMA data on AIF and EBA calculations. Notes: the figure contains the five main sources of borrowed cash or securities with the breakdown by jurisdiction of the counterparty. The five main sources of borrowed cash or securities with the country of the counterparty informed cover 55% of the total main borrowing sources.

2.1.3 Investment firms (IFs)

60. This section investigates the breakdown by country of domicile of the five, if available, counterparties or group of connected counterparties where the largest amounts of the investment firm's own cash are deposited[20]. The aim of the section is to know if IFs domiciled in EU/EEA countries rely on TCUs to place their deposit accounts.

61. The analysis is based on EBA supervisory data as of December 2023 for 636 Class 2 investment firms (out of the total population of 2,076 investment firms in EU/EEA at highest level of consolidation) domiciled in EU/EEA countries covering 56.4% of total capital requirements of investment firm population. The analysis relies on relevant supervisory data reported by Class 2 investment firms directly to the EBA. The EBA does not receive relevant data for Class 1 minus (i.e. investment firms subject to CRR) or Class 3 firms (small and non-interconnected). For this reason, these firms are not part of the analysis. Similarly, this data is not received by ESMA.

62. Deposits in TCUs represent only 5.0% of the total deposits of EU/EEA IFs' own cash (Figure 9), with the majority of deposits placed with EU/EEA undertakings (93.7%). IFs in almost all EU/EEA countries (except SI) have some share of their own cash deposits located in third countries, although there is heterogeneity across countries. Five countries have a significant

[20] The country of the counterparties has been retrieved based on the counterparty 's LEI code using GLEIF. In the cases where the country could not be retrieved from the LEI code, the counterparty name has been used, by finding a match manually, where a counterparty – and the related country – could be identified with reasonable certainty.

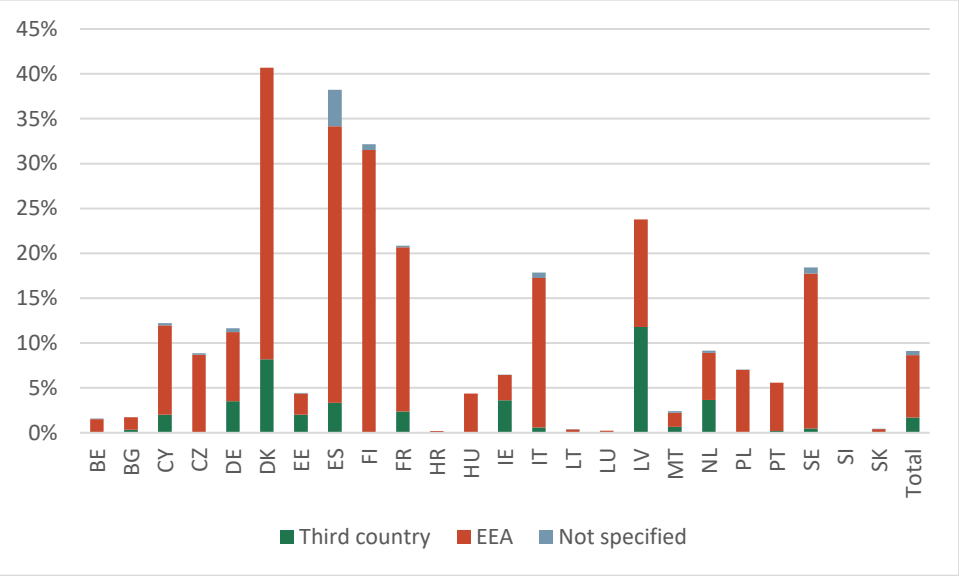
share of the IFs' own cash deposits located in third countries, namely MT (79.4%), Ireland (53.1%), EE (45.2%), NL (44.5%) and DE (30.2%). Other six countries (FR, DK, BG, CY, Latvia, LU) have a non-negligible share ranging from 14.3% (DK) to 21.2% (LU). For the remaining countries, IFs' own cash deposits are mostly located in EU/EEA countries with less than 10% of the total deposits located in third countries.

Figure 9: IF's own cash deposits by residence of the counterparty (EU/EEA, third countries or not specified), breakdown by country of domicile of the IF, 2023/Q4

Source: EBA Supervisory data (2023 Q4) and EBA calculations.

63. In percentage of (combined) on- and off- balance sheet total, third country deposits represent only 1.7% (Figure 10). For most of the IFs established in EU/EEA countries, the share of third country deposits is negligible in terms of (combined) on- and off- balance sheet total (less than 5%), with only DK (8.2%) and LV (11.8%) having a somewhat higher share. In general, total deposits (both in EU/EEA and in third countries) do not constitute a large share of investment firm's on- and off-balance sheet total.

Figure 10: IF's own cash deposits by residence of the counterparty (EU/EEA, third countries or not specified) as a share of (combined) on- and off- balance sheet total, breakdown by country of domicile of the IF, 2023/Q4

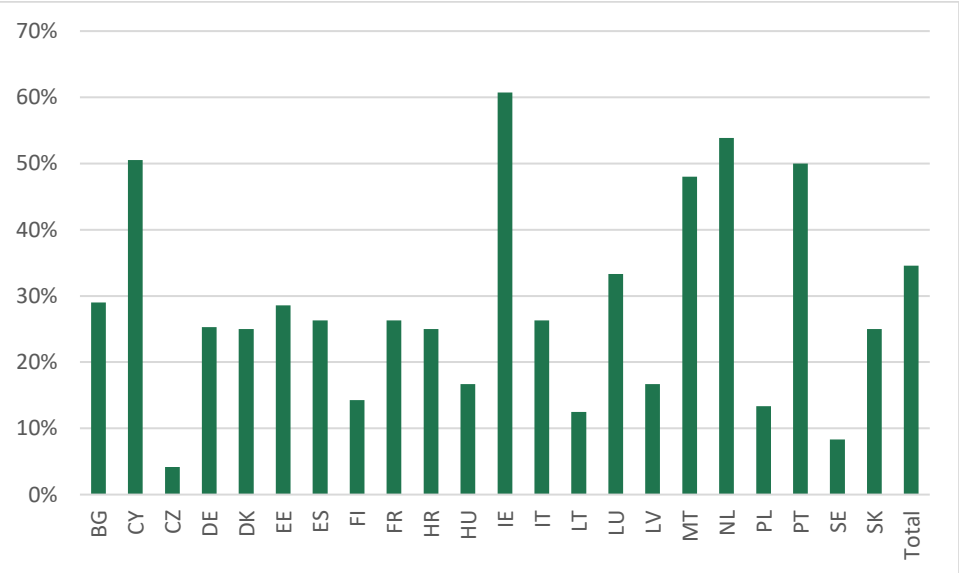


Source: EBA Supervisory data (2023 Q4) and EBA calculations.

Note: Only 539 investment firms which reported on- and off-balance sheet total are included in the chart.

64. In terms of number of IFs, 34.6% of the total number reported to hold some own cash deposits in third countries (Figure 11). More than a third of the IFs in IE (60.7%), NL (53.8%), CY (50.5%), PT (50.0%), MT (48.0%) and LU (37.3%) have deposits in TCUs, although for CY, PT and LU these deposits do not represent a material share of the total deposits held by IFs in the country (see Figure 9).

Figure 11: Percentage of investment firms reporting own cash deposits into third countries, 2023/Q4



Source: EBA Supervisory data (2023 Q4) and EBA calculations.

65. Similarly to the considerations expressed in relation to cash exposures of MMFs and AIFs, as a caveat, it is not possible to exactly correlate the cash exposure with the core banking service, which, however is assumed to be taking of deposit by TCUs.

66. In accordance with Article 21c(4) CRDVI, to the extent that such deposits with TCUs are ancillary to investment services under Section A of Annex I to MiFID, will be covered by the MiFID carve out. Alternatively, to the extent that such TCUs belong to the same group of the IFs could be covered by the intra-group exception under point (c) of Article 21c(2) CRDVI.

2.2 Data analysis of financial sector entities under EIOPA's remit

2.2.1 Insurance and reinsurance companies

67. This section investigates the breakdown by country of domicile of the significant risk concentrations of insurance and reinsurance undertakings in scope of groups domiciled in the EEA. The analysis is based on group level reporting as at end December 2023 under Annual Solvency II, which EIOPA has transmitted to the EBA for the purposes of this mandate.

68. The data is reported at group level and it includes insurance and reinsurance undertakings in scope of group supervision. The data only includes exposures with country informed[21].

69. The significant risk concentrations reported by insurance and reinsurance companies refer to exposures of equity, bonds, assets whose risks are mainly borne by the policyholders, derivatives, other investments, loans and mortgages, guarantees and commitments and other direct exposures.

70. Under the item guarantees and commitments the group reports the guarantees issued by the entities of the group. Loans and mortgages contain the risk both on the asset and on the liability side. Therefore, loans and mortgages in the liability side may be considered core banking services. The exposures reported are those above the threshold determined by the group supervisor in accordance with Article 244(3) of Directive 2009/138/EC, following the instructions set out in section S.37.01 of Annex III to this Regulation.

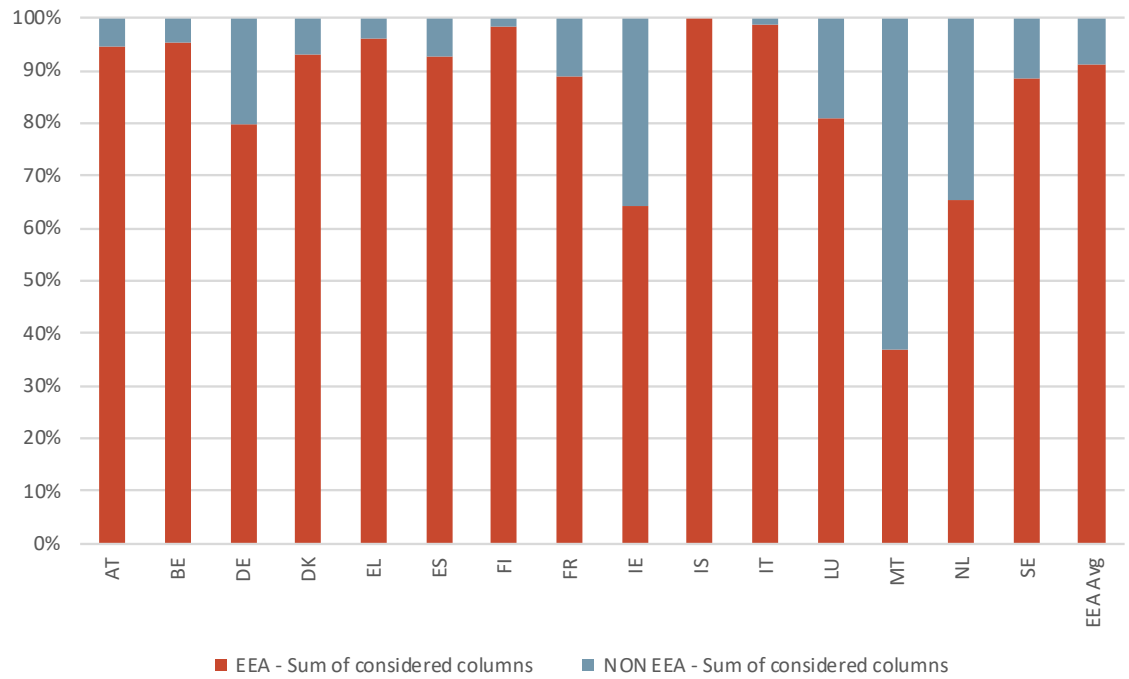
71. As at December 2023, the significant risk exposures located in third countries of EU/EEA insurance and reinsurance companies are 8.8% of total significant risk exposures. Only seven EU/EEA countries out of fifteen have above average significant risk exposures located in third countries, with MT having more than half of their significant risk exposures located in third countries (63%), followed by IE (36%), NL (35%), DE (20%), LU (19%), SE (12%) and FR (11%). The other eight EU/EEA countries do not have significant risk exposures located in third countries (AT, BE, DE, GR, ES, FI, IS and IT). As only one country has significant risk exposures that represent more than half of total exposures, there is evidence to conclude that the reliance of EU insurance companies on third countries to undertake their business activity seems to be limited.

[21] EBA is further liaising with EIOPA to be able to carry out the quantitative analysis based on such more comprehensive basis.

72. Significant risk exposures of EU/EEA insurance and reinsurance companies are relevant for MT and, to a lesser extent, for Ireland. For the rest of the countries, they are more limited in size (NL, DE and LU) or almost inexistent for five countries. Therefore, evidence based on data on significant risk exposure does not suggest an excessive reliance on TCUs by EU/EEA insurance companies to perform their activities.

73. This analysis contains all significant risk exposures reported by insurance companies, therefore it represents the maximum scenario of the exposures of insurance companies towards undertakings domiciled in third countries. However, given the composition of the significant risk exposures, it cannot be assumed that the analysed data exclusively corresponds to the receipt of core banking service from TCUs. For instance, data on equity, bonds, assets whose risks are mainly borne by the policyholders are likely not related to core banking services. The group also reports the guarantees issued by the entities of the group, this data could correspond to guarantees and commitments. However, depending on the issuer, they could be captured by the exception under letter (c) of Article 21c CRDVI, concerning core banking services provided by "an undertaking of the same group as that of the undertaking established in a third country".

Figure 12: Breakdown by country of domicile of the significant risk concentrations of insurance companies domiciled in the EEA, 2023/Q4



Source: EIOPA data on insurance companies and EBA calculations.

2.3 Anecdotal evidence of the state of play of the direct provision of core banking services from third countries to EU financial sector entities

74. As summarised in Table 1, supervisory data are not available for all EU FSEs that may be recipient of core banking services; for instance, no supervisory data is available for UCITS (except for those which are MMFs), for IFs (except for Class 2 IFs) or for non-bank payment service providers ('PSPs').

75. For those EU FSEs for which supervisory data is available, such data does not cover all core banking services, but mostly cash exposures. These can be connected to the core banking service of taking of deposits by TCUs. Conversely, scant quantitative information is available for the other two core banking services, i.e. lending or provision of guarantees and commitments. Furthermore, as mentioned above, it is not always possible to exactly correlate the data to the core banking service, since data reporting follows a risk-based rather than an activity rationale.

76. In the light of the incomplete quantitative market representation for the reasons outlined above, the EBA has sought for anecdotal evidence by actively engaging with stakeholders. As regards the offer side of core banking services, it has heard the views of TCCIs. As to the demand side, it has heard the views of representatives of EU FSEs in as much as recipients of core banking services from third countries, notably of:

    a) EU asset management companies, funds and investment firms;
    b) EU insurance and reinsurance companies;
    c) EU payment and e-money institutions.

Representative of ESMA and of EIOPA and of competent authorities have also participated to the interactions with the industry.

77. Furthermore, the EBA has engaged with representatives of EU banks and of EU payment and e-money institutions, and heard the views of the members of the Banking Stakeholders Group within the EBA to collect the point of view of European banking and payment operators.

78. In respect of the offer side of the core baking services, the engagement with stakeholder aimed at gathering a better understanding of the: a) type of core banking services directly provided from third countries to EU FSEs; b) type of EU FSEs that are recipient of such banking services; c) quantitative and functional relevance of the core banking services provided to each financial sector; d) impact of the CRDVI regime on the current state of play.

79. In respect of the EU FSEs demand side of the core banking services, the engagement with representatives of EU asset management companies, funds and investment firms aimed at gathering a better understanding of the rationale to resort to undertakings in third countries for the core banking services, having regard to the business model of EU FSEs at stake; the amount in Euro of the core banking services received by EU FSEs of that sector from TCUs; as well as the estimated impact on such EU FSEs of the entry into application of the prohibition under Article 21c CRDVI on the current state of play.

80. With regard to the interaction with the representative of the insurance sector, the same questions raised with representatives of EU asset managers, funds and investment firms have been shared, drawing the attention in particular to whether EU insurance and reinsurance companies have cash accounts in third countries, e.g. to manage treasury operations, and

whether EU insurance and reinsurance companies entertain intra-group operations with entities of same group established in third countries or put differently, whether EU insurance companies receive core banking services from group entities established in third countries.

81. As a general comment, TCCIs have drawn the attention on four areas of their business that may be significantly impacted by the application of the prohibition to provide core banking services from third countries:

    (a) clearing of USD payments in respect of non-bank PSPs;

    (b) custody services provided by non-EU global custodians, including via sub-custodian arrangements;

    (c) provision of loans and credit facilities to EU insurance companies, as well as reliance on TCUs to access non-EU markets;

    (d) financing of SPVs in the rump-up phase of securitisation transactions.

82. To note that TCCIs have acknowledged the feasibility of alternative solutions involving the provision of the core banking service from within the EU by an institution or a TCB belonging to the same third country group. However, they have underscored potential cost increase due to the reorganisation of the business lines and related structure, and potential related inefficiencies for EU FSEs. Reference is made in particular to placing deposits as eligible investments under Article 12 MMF Regulation[22] or Article 50(1)(f) UCITS Directive[23]; to opening of cash accounts with third country banks (Article 21(7) AIFMD); or to the delegation of the safe keeping of assets to sub-custodians under Article 21(11) of the AIFMD and Article 22a of the UCITS Directive to the extent the latter entail the cross-border direct taking of deposits from or granting overdraft facilities to EU funds or asset management companies

83. With specific regard to the point relating to the financing of SPVs in the rump-up phase of securitisation transactions, it is noted that SPVs are not EU FSEs and therefore fall outside the scope of the mandate for this Report. It is noted that, in general, TCCIs that raised this point have credit institutions or TCBs established in the EU which could provide such financing to SPVs. However, it is not possible for the EBA to assess the impact of the application of Article 21c CRDVI on this market segment, since TCCI did not provide any quantitative information or evidence of the issue and decisions on the actual provider of the financing may depend on group organisation structure, prudential arbitrage opportunities, or also on tax reasons. Given the specificity of the sector, any potential negative impact should also be assessed in that context.

84. Broadly speaking, EU FSEs have focused their feedback on the following aspects.

    (a) Representatives of EU asset managers, funds or IFs:

        i. concur in the assessment that, although it has not been possible to properly quantify the impact of the application of Article 21c CRDVI, such impact will have a marginal cost effect on the current business considering that the

[22] Requiring that such third country credit institution "is subject to prudential rules considered equivalent to those laid down in Union law in accordance with the procedure laid down in Article 107(4) of Regulation (EU) No 575/2013".

[23] Requiring that such third country credit institution "is subject to prudential rules considered by the competent authorities of the UCITS home Member State as equivalent to those laid down in Community law".

majority of transactions are carried out or may be carried out directly with EU credit institutions or with TCBs of non-EU credit institutions;

ii. with regard to financing to asset managers/funds, which is captured by the prohibition of lending by TCCIs by Article 21c CRDVI, there is awareness of the need for asset managers and funds to adapt their cash borrowing contracts to reflect that the lending party will be a EU institution or a TCB. Representatives of EU funds, asset managers or investment firms noted that this adaptation may have some marginal cost impact. Representatives of asset managers and funds have also pointed out to the possibility to occasionally resort to reverse solicitation to obtain financing directly from TCCIs.

iii. Similarly to the point made by some TCCIs active in global custody services, some EU asset managers, funds and investment firms have raised concerns on the impact of the prohibition of Article 21c CRDVI on the functioning of sub-custodian arrangements currently in place between the local EU depositary and the non-EU global custodian.

(b) Representatives of the EU insurance and reinsurance undertakings have provided feedback by some large cross-border insurance groups, on the assumption that the latter may be potentially most impacted by the prohibition of Article 21c CRDVI. Based on the feedback received, such international groups pointed out the following potential consequences from the prohibition set out in Article 21c CRDVI:

i. impact on treasury and liquidity operations, considering the need to rely on international banks for such services. Reliance on third country financial institutions for cash accounts (e.g. for handling payment transactions such as incoming premiums, claims payments, investment processing), cash management, bank covenants and custody services has been brought to the attention;

ii. the insurance and reinsurance companies that provided feedback also brought to the attention to have intra-group loan agreement in place with non-EU entities. In this regard the EBA notes that depending on the actual articulation of the loan, such financing facility could be covered by the exemption under Article 21c(2) point (c) CRDVI.

85. Whilst 2 insurance companies that provided feedback argued in favour of extending the exemption currently envisaged for credit institutions also to the insurance sector to avoid re-structuring the current treasury functions that rely on the same international banks for the whole group, 2 other insurance companies did not express a view on this, and 1 insurance company acknowledged that the change would have little impact, considering that large international banks have subsidiaries or third country branches in the EU.

2.3.2 Clearing of USD payments

86. As referred above, a couple of TCCIs have brought to the EBA attention concerns about the provision of clearing services of USD payments to EU FSEs that are non-bank PSPs. Whilst

clearing is not a core banking service, it can only be provided in conjunction with operational deposit taking from the non-bank PSPs (placing funds on the TCCI accounts for the clearance). Deposit taking on a cross-border basis from a third country is the core banking service falling within the prohibition of Article 21c CRDVI.

87. It has been illustrated that the provision of clearing of USD payments requires direct access to the US payments and clearing systems including the Federal Reserve, The Clearing House and the National Automated Clearing House Association (Nacha), which can only be provided by specified US financial institutions.

88. Furthermore, it has been illustrated that under the application of Article 21c CRDVI, such services will need to be provided by, and booked to a EU entity thus adding an intermediary in the clearing chain. Those TCCIs raising this issue to the EBA's attention have pointed out that this would add counterparty credit risk, a potential time lag to cross border payments given routing via an additional intermediary, and risks of driving business out of the EU – e.g. where European non-banks use or establish a US presence to access US entities who participate in USD payments and clearing systems (and equivalent in other markets)[24].

89. The EBA has examined the issue also in liaison with representatives from EU payment and e-money institutions and in liaison with other competent authorities.

90. The representatives of non-bank PSPs have observed that the application of the prohibition set out in Article 21c CRDVI may affect a wider range of currencies rather than USD only, including both strong and less liquid currencies. They also drew attention on operators in the remittance sector, as providers specialised in offering cross-border and often cross-currency transfers across the world to households.

91. The representatives of the non-bank PSPs were not in the position to provide a quantitative assessment of the envisaged impact of the application of Article 21c CRDVI on their members, but generically pointed to a likely increase in costs and potential complexity, as a consequence of the addition of a EU intermediary in the payment chain.

92. It is also noted that some non-bank PSPs include a licensed credit institution within their EU group, that could be used to transfer money to third countries relying on the exception under point (b) of Article 21c CRDVI. Other non-bank PSPs have business models entailing no actual border crossing by the money that is transferred from the payor to the payee; others, in particular remittance services, rely on correspondent bank accounts in particular in relation to exotic currencies.

93. The EBA acknowledges that neither the private nor the official sector have raised financial stability concerns that may stem from adding one EU intermediary to the payment chain, as a consequence of the prohibition set out in Article 21c CRDVI. Rather, the private sector has raised the attention to potential cost increase and potentially delayed payments should a TCB be introduced as intermediary in the payment chain between the non-bank PSP and the TCCI.

[24] Similarly, these TCCIs drew attention on the use of such service by European global corporates to manage their currency risks. However, it is noted that strictly speaking the provision of core baking services to EU entities which are not FSEs is outside the scope of the mandate this Report.

From a public interest perspective, it is observed that EU institutions or TCBs are subject to EU regulation and supervision, providing closer control on the prudential resilience.

94. As mentioned above, there is a variety of business models and structural organisation to carry out cross-currency payment services by non-bank PSPs making it difficult, without further support, to identify affected market segments and quantify the potential costs increase. Furthermore, based on the qualitative information provided to the EBA, the attention has not been raised to the existence of material risks (including financial stability risks) associated to the entry into force of the prohibition of Article 21c CRDVI.

2.3.3 Asset management companies, funds and investment firms: global custody services

95. Some non-EU banks and some EU asset managers and funds have drawn the attention on the regime of custody and safekeeping as a business area that will be impacted by the prohibition of cross-border provision of core banking services from third countries.

96. The EBA notes that Articles 21c(4) and 47(2) CRDVI carve out investment services set out in Section A of Annex I to MiFID and related ancillary services in Section B of Annex I MiFID, from the application of Article 21c CRDVI. More specifically, also based on informal exchanges with the European Commission on the interpretation of this provision, it may be argued that the MiFID carveout set out in Articles 21c(4) and 47(2) CRDVI only applies to custody, safekeeping, deposit taking and lending services when they are ancillary to MiFID investment services under Section A of Annex I to MiFID. Conversely, it appears that the MIFID carveout doesn't apply to deposit taking and loan granting when custody services are provided on a standalone basis[25] in accordance with the applicable MiFID/MiFIR legislation.

97. The EBA notes that based on recent analysis[26], the share of custody market held by foreign-owned EU subsidiaries amounts to 20% of the total market of custody services, therefore third country entities could already have in place EU institutions or TCBs for the provision of core banking services from within the Union to functionally support custody business.

98. In the exchanges with the stakeholders, from a competitiveness perspective the attention has been raised on the adverse impact of the prohibition of Article 21c CRDVI on the ongoing operationality of EU funds and EU asset managers due to their undermined ability to intermediate and conduit investment in accordance with their business model, including when they operate in third countries. TCCIs and EU FSE mentioned in particular that Article 21c CRDVI would impose limitation on the placing of deposits as eligible investments in third country banks under Article 12 MMF Regulation or Article 50(1)(f) UCITS Directive and the opening of cash accounts with third country banks (Article 21(7) AIFMD)) or the delegation of the safe keeping of assets to sub-custodians under Article 21(11) of the AIFMD and Article 22a of the UCITS Directive, to the extent the latter entail the cross-border direct taking of deposits from or granting overdraft facilities to EU funds or asset management companies.

[25] In such cases, the other flexibilities embedded in Article 21c CRDVI remain available, eg. reverse solicitation, intra-group exemption

[26] EBA Report on the analysis on the market share of subsidiaries of third country banking groups in the EU made in response to the Request for submitting indicators on the interconnectedness of the EU financial sector with global markets.pdf (europa.eu)

3. Conclusions

3.1 General considerations on the impediments to achieving a comprehensive view of the current state of play

99. Several factors make it difficult to reach a EU comprehensive and holistic view of the current state of play of the inflow of core banking services directly from third countries and of the impact of the prohibition set out in Article 21c CRDVI. A non-exhaustive list of such factors includes the following:

    (a) absence of harmonized CRD external perimeter due to the lack of a uniform notion of core banking services and existence of conceptual variations based on national law.

    (b) availability of partial data about EU FSEs and impediments to the exact correlation with core banking services or existing exemptions or carve outs under Article 21c CRDVI considering that raw data:

        i. concern risk related reporting requirements, not specific services;

        ii. do not specify the type of counterparty, i.e. whether it is a TCCI or a TCU. This is an important information considering that whilst taking of deposits requires the establishment of a TCB when provided by TCCIs or by any other third country undertaking, the provision of lending or of guarantees and commitments requires the establishment of a TCB in the EU only when such core banking service is provided by a TCCI;

        iii. do not incorporate elements helping to identify potential links to exemptions or carve outs under Article 21c(2) CRDVI;

    (c) Multiple factors may determine TCUs to provide core banking services from third countries, such as organisational structure of TCG, arbitrage opportunities with prudential requirements, tax reasons etc ...

100. The concluding remarks outlined below take into account the caveats outlined in this section.

3.2 Findings of quantitative and qualitative analysis

101. The main findings of the quantitative data analysis are herein illustrated, grouped by core banking service.

a. Cash exposures towards TCUs

102. Taking deposit by a TCCI or a TCU is a core banking service and requires the set-up of – at least - a TCB in the Union (unless the exemptions and carve outs in Article 21c(2) to (5) apply).

103. Data on cash exposures towards TCUs is available for MMFs, AIFs and IFs. Such data has been used as a proxy for asset management companies, for which no data is available. No data is available for UCITS (except for those UCITS that are MMFs) or for insurance and reinsurance undertakings. Similarly, no quantitative data is available for non-bank PSPs.

104. As a general remark, the findings show that cash deposited with TCUs by those EU FSEs for which data is available, is not material both in absolute and in relative terms where it is considered in aggregate at EU/EEA level.

105. Rather, findings show that cash exposures towards TCUs are concentrated in EU FSEs established in a handful of MSs, in particular in IE and LU. For instance, MMFs domiciled in IE and LU represent the biggest share of the MMFs cash exposure towards counterparties in third countries. This may be explained by the circumstance that MMFs domiciled in those two MSs have more than half of their exposures denominated in foreign currencies.

106. As explained in the previous Chapter, absent further qualitative element it is not possible to extract from the raw data the core banking service it refers to. However, some information may be drawn from EU legislation.

107. As regards MMFs, Article 12 of the MMF Regulation considers deposits with TCCIs as an eligible investment where relevant conditions are met[27]; as a consequence it is assumed that the cash exposure shown by data derives from deposits with TCCIs.

108. As regards AIFs, the cash exposure may be related in part to cash accounts opened by the AIF with third country credit institutions in relation to the operations of the fund, as envisaged by Article 21(7) AIFMD in combination with Article 18(1), (a), (b) and (c) of Directive 2006/73/EC[28]. With specific regard to IE, part of the cash exposure of funds or asset managers may also be related to the taking of deposits by sub-custodians delegated by the depositary to carry out depositary functions under the relevant provision of the AIFMD in combination with the AIFR.

109. As to IFs, on the sole basis of the data examined, it cannot be extracted the type of core banking service IFs receive, however, it may be assumed that it is deposit taking by TCUs.

110. As regards non-bank PSPs, as illustrated in Section 2.3, it has been reported by some TCCIs that they collect deposits from non-bank PSPs as underlying operation to provide clearing service of USD payments in the US. The EBA has no data relating to such outflow. Neither the TCCIs nor the non-PSPs representatives have provided quantitative data relating to this market segment.

[27] As recalled above a similar provision is envisaged in Article 50(1)(f) of the UCITS Directive.

[28] In accordance with Article 21(7) AIFMD: "The depositary shall in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF at an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC, or another entity of the same nature, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in Article 16 of Directive 2006/73/EC". N.B.: the entities referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC are central banks, EU credit institutions or third country credit institutions. To note that the same/similar provisions apply in the context of the UCITS Directive.

b. Lending by TCCIs to EU FSEs

111. Relevant supervisory data on cross-border lending to EU FSEs is available for a smaller subset of the EU FSEs for which supervisory data has been examined. Namely, data relating to lending is only available for AIFs and for insurance and reinsurance companies, and it is not available for IFs[29]. No supervisory data is available for UCITS or for non-bank PSPs.

112. Supervisory data relating to AIFs provided information on borrowed cash and securities. Supervisory data relating to insurance and reinsurance undertakings provided information respectively on borrowed cash and securities, and on significant risk exposures.

113. As regards AIFs, as illustrated in Section 2.1.1, the five main sources of borrowed cash or securities are not material in relative and absolute terms at EU level. However, they may be material or significant in a handful of cases, in particular in IE and LU, and to a less extent in PT and DE. For the other countries it is limited or very low.

114. Some additional considerations are opportune. Firstly, based on available data, it is not possible to distinguish between borrowed of cash or securities[30], secondly data does not allow to identify whether the lending service has been provided by TCCIs or by TCUs which are not TCCIs[31]. As a consequence, the overall amount of borrowing by AIFs which falls within the category of core banking service not covered by existing exemptions could be lower than the figure resulting from the simple data analysis.

115. With regard to the insurance sector, as underscored in Section 2.2.1, the examined supervisory data contains all significant risk exposures reported by insurance companies, therefore it represents the maximum scenario of the exposures of insurance companies towards undertakings domiciled in third countries. However, given the composition of the significant risk exposures, it cannot be assumed that the analysed data entirely and exclusively corresponds to the receipt of core banking services from TCUs. For instance, data on equity, bonds and assets whose risks are mainly borne by the policyholders are likely not related to core banking services received. Such broad composition of the reported amounts for 'significant risk exposures' makes it very difficult to establish the exact portion of the exposure due to borrowing from TCCIs/TCUs.

116. Overall, evidence based on data on significant risk exposure does not show an excessive reliance on TCCIs by EU/EEA insurance and reinsurance undertakings to perform their activities. Considering the caveats referred to, the portion relating to actual borrowing from third countries should result to be even more limited. Data reflects a similar pattern to that emerged in relation to the taking of deposits: above average significant risk exposures located in third countries can only be retrieved in insurance or reinsurance companies established in a handful EU/EEA countries, in particular MT, IE, NL, DE, LU, SE and FR.

c. Guarantees and commitments

[29] Based on Article 9 MMF Regulation, MMFs are precluded from borrowing or lending cash.

[30] For purposes of Annex I CRD, only granting cash loans should be considered "lending".

[31] For purposes of Article 47 CRDVI, only TCCIs are captured by the CRDVI requirement to establish a TCB to provide lending services and hence by the prohibition to grant lending on a cross-border basis.

117. With regard to the core banking service relating to the provision of guarantees and commitments to EU FSEs by TCCIs/TCUs, some data is available only in relation to insurance and reinsurance companies. No supervisory data is available from the other EU FSEs for which quantitative analysis has been carried out. No data is available from UCITS or non-bank PSPs. In respect of UCITS – as well as AIFs – the data gap does not allow to appreciate the relevance of the use of guarantees or commitments, including by third country credit institutions, to reduce own funds requirements up to 50%[32].

118. As regards insurance and reinsurance companies, data on guarantees and commitments are reported at group level in the context of significant risk exposure, therefore it cannot be singled out from the other exposures to exactly correlate it to the core baking service of provision of guarantees and commitments. The same caveats illustrated above apply.

119. No anecdotal evidence relating to the receipt of guarantees or commitments by EU FSEs from TCCIs/TCUs has emerged from the interaction with financial stakeholders, including in relation to UCITS or AIFs. The overall elements that have been collected may lead to conclude that the impact of the prohibition of the direct provision of guarantees and commitments by TCCIs/TCUs to EU FSEs is low.

3.2.1 Concluding remarks

120. As summarised in the section above, the following observations should be taken into account:

a) as regards the taking of deposits, the cash exposure of EU FSEs both in absolute and in relative terms is estimated to be low when considered in aggregate at the EU level, however it is concentrated in a handful of MSs. In some instances, such cash exposure can be correlated to direct investments carried out in the foreign markets by the EU FSEs.

b) quantitative data for lending by TCCIs/TCUs to EU FSEs is available for a smaller subset of EU FSEs. The data collected for supervisory purposes does not allow a clear determination of the inflow of lending services by TCCIs/TCUs to EU FSEs. In the light of this, it is hard to reasonably assess potential material impact of the prohibition on EU FSEs.

c) data concerning the provision of guarantees and commitments by TCCIs to EU FSEs is poor and shows very low inflow of such service to EU FSEs. Such representation is indirectly confirmed by the little attention drawn to this core banking service by the stakeholders in the course of the interactions with the EBA.

121. In the light of the illustrated overall state of play, and taking into account the observations outlined in section 3.1, the following final considerations may be developed.

122. As a general remark, the purpose of Article 21c CRDVI is to regulate when the establishment of a TCB is required for the provision of core banking services by TCCIs or TCUs to counterparties established in the EU. However, exemptions and carve outs expressly

[32] See Article 7(1), second sub-paragraph, UCITS Directive and Article 9(6) of AIFMD.

envisaged in that provision provide a degree of flexibility in the articulation of such requirement.

123. Notably, the requirement to establish a TCB in the relevant MS does not apply where the exemptions and carve outs envisaged in Article 21c(2) to (5) CRDVI, within the limits set forth for each of them, apply. They may provide an adequate solution to meet the demand of such core banking services. Notably, the establishment of a TCB is not required where the inter-bank or the intra-group exemptions apply (points (b) and (c) of Article 21c(2) CRDVI). Adequate protection of existing contractual rights is granted to facilitate the transition to the new regime (Article 21c(5) CRDVI). Additionally, the MiFID carve out aims to avoid overlapping between the CRD and the MiFID regime, and makes the provision of MiFID investment and related ancillary services unaffected by the new regime set out in the CRDVI.

124. The use of reverse solicitation is subject to the limits set out in Article 21c(2), second sub-paragraph, and (3). It may be considered by non-bank PSPs to allow TCUs to take deposits functional to the provision of clearing services of payments in other currencies, where such clearing service is provided in the third country.

125. Along the same lines, some deposit-taking activity from IFs by TCCI/TCUs in the third countries might be motivated by the underlying business/investment rationale of the IF, eg. where it is an investment or a service ancillary to an investment service carried out abroad. The application of the 'MiFID carve out' (Articles 21c(4) and 47(2) CRDVI) to these situations should be considered, however it is residual, considering that such carve out covers MiFID investment and related ancillary services provided by third country IFs into the EU. Reverse solicitation may be resorted to by such IFs in accordance with the conditions set out above.

126. The case of centralisation of the treasury function in TCCIs/TCUs, where this entails taking of deposit or granting of loans, eg. to to insurance and reinsurance companies or insurance holding companies, will be captured by Article 21c CRDVI and will require the provision of the core banking services to insurance companies from within the EU (eg. via EU subsidiaries or TCBs of international banks), unless reverse solicitation, or other exemptions or carve out apply.

127. As regards lending by TCCIs/TCUs to EU FSEs, quantitative data analysis and qualitative anecdotal evidence may lean towards a potentially limited impact on the EU FSE operations in the EU, and the tools and carve outs set out in Article 21c CRDVI should be an adequate solution to meet the demand of such services.

128. Various stakeholders referred to potential cost impact for customers stemming from the reorganisation of the business if a TCB has to be established in the Union for the provision of core banking services. Similarly – as regards clearing of payments in USD or in other currencies - some stakeholders have raised the possibility of delays in payments should an additional entity be introduced in the payment chain. In general, the elements to assess the actual impact and the effect on the competitiveness on the EU FSEs are limited and anecdotal, and based on the collected information, they do not seem to point to materiality, but may need to be further monitored.

129. Similarly, there is little element to assess if, and to what extent, the core banking services received by EU FSEs from TCUs can actually be replaced by EU bank providers. The EBA notes that this largely depends on a business judgment of market operators, considering their business model, organisational structure and risk appetite to increase some business lines or to enter into potentially new business lines. Considerations pertaining to inherent barriers to entry should also be taken into account in relation to specialised business lines or to jurisdictional links or requirements of some services.

130. Having regard to the illustrated state of play and to the considerations above, Article 21c CRDVI may provide flexibility – i.e. combination of exemptions and carve outs - to EU FSEs business needs to receive core banking services where the third country undertaking has no TCB in the relevant MS (or subsidiary in the EU). Based on the quantitative and qualitative analysis performed, there is no clear case for an extension of such flexibility.

131. However, the EBA notes that Article 21c CRDVI does not expressly address the interaction with those AIFMD and UCITS Directive provisions entitling the concerned EU FSEs to receive core banking services for their ongoing operationality in third countries in accordance with their business. Reference is made in particular to placing deposits in third country banks as eligible investments (Article 12 MMF Regulation or Article 50(1)(f) UCITS Directive); to operating modalities such as opening of cash accounts with third country banks (Article 21(7) AIFMD)) or the delegation of the safe keeping of assets to sub-custodians (Article 21(11) of the AIFMD and Article 22a of the UCITS Directive) to the extent the latter also entail the provision of cross-border core banking services such as direct taking of deposits or granting overdraft facilities.

132. The Q&A tool may be an adequate support to competent authorities in their supervisory tasks by clarifying in particular such interaction.

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