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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(8) Title VI is replaced by the following:	
‘Title VI PRUDENTIAL SUPERVISION OF THIRD COUNTRY BRANCHES AND RELATIONS WITH THIRD COUNTRIES’	
Chapter 1	
Prudential supervision of third-country branches	
Section I	
General provisions	
Article 47	
Scope and definition	
1. This Chapter lays down the <u>minimum requirements</u> rules concerning the carrying out in a Member State of <u>the activities of a third country branch</u> .	
(a) any of the activities listed in Annex I to this Directive by an undertaking established in a third country;	
(b) the activities referred to in Article 4(1), point (b), of Regulation (EU) 575/2013, by an undertaking established in a third country that fulfils any of the criteria laid down in points (i) to (iii) of that point.	
2. By derogation from paragraph 1, where the undertaking in the third country is not a credit institution or an undertaking that meets	

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the criteria of paragraph 1, point (b), the carrying out of any of the activities listed in Annex I, points (4), (5), and (7) to (15), to this Directive by that undertaking in a Member State shall be subject to Title II, Chapter IV, of Directive 2014/65/EU	
3. For the purposes of this Title, the following definitions shall apply:	
(a) ‘third country branch’ shall mean branches established in a Member State by <u>a credit institution which has its head office in a third country and which would qualify as a credit institution as per Article 4(1)(1) of Regulation (EU) 575/2013 if it were established in a Member State</u> either: <u>(a) ‘third country branch’ means a branch established in a Member State in accordance with this Title by either:</u>	
(i) an undertaking which has its head office in a third country, for the purpose of carrying out any of the activities referred to in paragraph 1; <u>(i) an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1)(a) of Regulation (EU) 575/2013 if it were established in a Member State, for the purposes of carrying out in that Member State both of the</u>	

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<u>services or activities listed in Annex I points (1) and (2); or</u>	
(ii) a credit institution which has its head office in a third country; <u>(ii) an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1)(b) of Regulation (EU) 575/2013 if it were established in a Member State, for the purposes of carrying out in that Member State any of the services or activities referred to in Article 4(1)(1)(b) of Regulation (EU) 575/2013.</u>	
(b) ‘head undertaking’ shall mean the undertaking with its head office in the third country that has established the third country branch in the Member State, and the undertaking’s intermediate and ultimate parent undertakings, as the case may be.	
<u>4. By [date: 31/12/2025], EBA and ESMA shall submit a joint report to the European Parliament, to the Council and to the Commission on the merit and modalities of harmonising the conditions under which a third country group may be required to set up a branch in a Member State and seek authorisation under Title VI of the CRD this Directive in order to provide banking services in that Member State. That report shall take due consideration of the articulation with investment services as regulated by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets</u>	

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<p>in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/. The report shall, at least, consider the existing frameworks for the cross-border provisions of banking services in Member States and other jurisdictions and assess:</p>	
<p>(a) the potential risks related to the cross-border provision cross-border of each of the services listed in Annex I, by an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1) of Regulation (EU) 575/2013 if it were established in a Member State, with a distinction service by service;</p>	<p>(a) the potential risks related to the cross-border provision cross-border of each of the services listed in Annex I, by an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1) of Regulation (EU) 575/2013 if it were established in a Member State, with a service by service distinction service by service;</p>
<p>(b) whether the obligation to set up a branch should be exempted in the case of services provided to certain categories of counterparties;</p>	
<p>(c) the extent to which reverse solicitation can provide further legally certain flexibility into the framework;</p>	<p>(c) the extent to which reverse solicitation can provide add further legally certain flexibility and legal certainty into the framework;</p>
<p>(d) how any other exemptions from the obligation to set up a branch may be regulated.</p>	
<p>In drawing up the report EBA should shall also analyse the available</p>	<p>In drawing up the report EBA and ESMA should shall also</p>

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<p><u>international experience in comparable jurisdictions. The Commission shall, if appropriate, submit a legislative proposal to the European Parliament and to the Council, based-on taking into account the recommendations made by EBA.²²</u></p>	<p><u>analyse the available international experience in comparable jurisdictions. The Commission shall may, if appropriate, submit a legislative proposal to the European Parliament and to the Council, based-on taking into account the recommendations made by EBA and ESMA.²²</u></p>
<p>Article 48</p> <p>Prohibition of discrimination</p>	
<p>Member States shall not apply to third country branches, when commencing or continuing to carry out their business, provisions which result in a more favourable treatment than that accorded to branches of institutions having their head office in another Member State of the European Union.</p>	
<p>Article 48a</p> <p>Classification of third country branches</p>	
<p>1. Member States shall classify third country branches as class 1 where those branches meet any of the following conditions:</p>	
<p>(a) the total value of the assets booked by the third country branch in the Member State is equal to or higher than EUR 5 billion, as reported for the immediately preceding annual reporting period in accordance with Section II, Sub-section 4;</p>	

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<p>(b) the third country branch's authorised activities include taking deposits and <u>or</u> other repayable funds from retail customers, <u>provided that and the amount of such deposits and other repayable funds is equal to or higher than 10% of the total liabilities of the third country branch, provided that they do not or the amount of such deposits and other repayable funds exceeds EUR 100 millions;</u></p>	
<p>(c) the third country branch is not a qualifying third country branch in accordance with Article 48b.</p>	
<p>2. Member States shall classify third country branches that do not meet any of the conditions laid out in paragraph 1 as class 2.</p>	
<p>3. Competent authorities shall update the classification of third country branches as follows:</p>	
<p>(a) where a class 1 third country branch ceases to meet the conditions laid down in paragraph 1, it shall immediately be considered as class 2;</p>	
<p>(b) where a class 2 third country branch starts to meet one of the conditions laid down in paragraph 1, it shall be considered as class 1 only after a period of three <u>six</u> months from the date on which it started to meet those conditions.</p>	
<p><u>4. Member States may apply in full or in part the requirements for credit institutions laid down in this Directive and in Regulation (EU)</u></p>	<p><u>4. Member States may apply in full or in part the requirements for credit institutions laid down in this Directive and in Regulation</u></p>

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<p><u>No 575/2013 to the third country branches referred to in the second subparagraph, provided that the requirements that apply as per this paragraph are at least as strict as those that apply to class 1 third country branches in accordance with this Title.</u></p>	<p>(EU) No 575/2013 to the third country branches referred to in the second subparagraph, provided that the requirements that apply as per this paragraph are at least as strict as those that apply to class 1 third country branches in accordance with this Title.</p> <p>4. Member States may apply to third country branches authorised in their territory, or to certain categories thereof, the same requirements that apply to credit institutions authorised under this Directive, instead of the requirements set out in this Title. Where the treatment laid down in this paragraph only applies to certain categories of third country branches, Member States shall set out the relevant classification criteria for the purposes herein. Paragraphs (1) to (3) shall not apply to those third country branches, except for the purposes of Article 48g.</p>
<p><u>Member States may apply the treatment referred to in the preceding subparagraph either:</u></p>	<p>Member States may apply the treatment referred to in the preceding subparagraph either:</p>
<p><u>(a) to all the third country branches authorised within their territory;</u></p>	<p>(a) to all the third country branches authorised within their territory;</p>
<p><u>(b) to all the class 1 third country branches authorised within their</u></p>	<p>(b) to all the class 1 third country branches authorised within their</p>

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<u>territory; or</u>	<u>territory; or</u>
<u>(c) to all the class 1 third country branches authorised within their territory that are not a qualifying third country branch in accordance with Article 48b.</u>	<u>(c) to all the class 1 third country branches authorised within their territory that are not a qualifying third country branch in accordance with Article 48b.</u>
<u>The third country branches referred to in point (c) shall include those having their head undertaking in a third country that has not been subject to a decision in accordance with Article 48b(2).</u>	<u>The third country branches referred to in point (c) shall include those having their head undertaking in a third country that has not been subject to a decision in accordance with Article 48b(2).</u>
Article 48b Conditions for ‘qualifying third country branches’	
1. Where the following conditions are met in relation to a third country branch, that branch shall be regarded as a ‘qualifying third country branch’ for the purposes of this Title:	
(a) the head undertaking of the third country branch is established in a country that applies prudential standards and a supervisory oversight in accordance with the third country’s banking regulatory framework that are at least equivalent to this Directive and Regulation (EU) No 575/2013;	
(b) the supervisory authorities of the third country branch’s head undertaking are subject to confidentiality requirements that are at least equivalent to the requirements laid down in Title VII, Chapter 1, Section	

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II of this Directive;	
(c) the country where the third country branch's head undertaking is established is not listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849;	
2. The Commission may adopt, by means of implementing acts, decisions as to whether the conditions laid down in paragraph 1, points (a) and (b) of this Article are met in relation to a third country's banking regulatory framework. For those purposes, the Commission shall comply with the examination procedure referred to in Article 464(2) of Regulation (EU) No 575/2013.	
3. Before adopting the decision referred to in paragraph 2, the Commission may request the EBA's assistance in accordance with Article 33 of Regulation (EU) No 1093/2010 to conduct an assessment of the relevant third country's banking regulatory framework and confidentiality requirements and to issue a report on that framework's compliance with the conditions laid down in paragraph 1, points (a) and (b), of this Article. EBA shall publish the outcome of its assessment on its website.	
4. EBA shall keep a public register of the third countries and third country authorities that meet the conditions laid down in paragraph 1.	
5. Upon receiving an application for authorisation in accordance with	

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<p>Article 48c, competent authorities shall assess the conditions laid down in paragraph 1 of this Article and in Article 48a to classify the third country branch as class 1 or class 2. Where the relevant third country is not recorded on the register referred to in paragraph 4 of this Article, the competent authority shall request the Commission to assess the third country's banking regulatory framework and confidentiality requirements for the purposes of paragraph 2 of this Article, provided that the condition referred to paragraph 1, point (c), of this Article is met. The competent authority shall classify the third country branch as class 1 pending the Commission's adoption of a decision in accordance with paragraph 2 of this Article.</p>	
Section II	
Authorisation and regulatory requirements	
Sub-section 1	
Authorisation requirements	
<p>Article 48c</p> <p><u>Minimum</u> Cconditions for the authorisation of third country branches</p>	
<p>1. Member States shall require that third country undertakings establish a branch in their territory before commencing the activities</p>	

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referred to in Article 47(1). 1. The establishment of a third country branch shall be subject to prior authorisation in accordance with this Chapter.	
2. Member States shall require that the applications for authorisation of third country branches be accompanied by a programme of operations setting out the envisaged business, the activities to be carried out among those referred to in Article 47(13) and the structural organisation and risk controls of the branch in the relevant Member State in accordance with Article 48h.	
3. Third country branches shall only be authorised where, <u>at a minimum</u> , all of the following conditions are fulfilled:	
(a) the third country branch meets the minimum regulatory requirements laid down in Sub-section 2 <u>or, where the Member State has applied the treatment referred to in Article 48a(4), the applicable requirements in accordance with this Directive and Regulation (EU) No 575/2013;</u>	(a) the third country branch meets the minimum regulatory requirements laid down in Sub-section 2 <u>or, where the Member State has applied the treatment referred to in Article 48a(4), the applicable requirements in accordance with this Directive and Regulation (EU) No 575/2013;</u>
(b) the activities that the head undertaking seeks authorisation for in the Member State are covered by the authorisation that such head undertaking holds in the third country where it is established and subject to supervision therein;	
(c) the supervisory authority of the head undertaking in the third	

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country has been notified of the application to establish a branch in the Member State and the accompanying documents referred to in paragraph 2;	
(d) the authorisation provides that the third country branch may only conduct the authorised activities within the Member State where it is established and expressly prohibits the third country branch from offering or conducting those same activities in other Member States on a cross-border basis, <u>except with respect to intragroup transactions operations between third country branches and subsidiaries with of the same head office undertaking or services provided on the basis of reverse solicitation;</u>	(d) the authorisation provides that the third country branch may only conduct the authorised activities within the Member State where it is established and expressly prohibits the third country branch from offering or conducting those same activities in other Member States on a cross-border basis, <u>except with respect to intragroup transactions operations between third country branches and subsidiaries with of the same head office undertaking or services provided on the basis of reverse solicitation where those services are provided on the basis of reverse solicitation or for intragroup liquidity purposes between third country branches of the same head undertaking or between third country branches and subsidiary institutions of the relevant third country branch's head undertaking;</u>
(dd) the EBA and ESMA shall monitor <u>intragroup transactions involving operations between the third country branches of the same head undertaking, and between the third country branches and subsidiaries of the same third country group authorised in Union with the same head office undertaking and shall submit a report to</u>	


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<p><u>the Commission setting out its findings on those</u> by [OP please insert the date = 24 months from the date of entry into force of this amending Directive] shall submit a report to the Commission on these transactions.</p>	
<p>(e) for the purpose of performing its supervisory functions, the competent authority is able to access all the necessary information on the third country branch's head undertaking from its supervisory authorities and to effectively coordinate its supervisory activities with those of the third country supervisory authorities, in particular in periods of crisis or financial distress affecting the head undertaking, its group or the third country's financial system;</p>	
<p>(f) there are no reasonable grounds to suspect that the third country branch would be used to commit or facilitate the commission of money laundering <u>or terrorist financing</u> within the meaning of Article 1, point 3 <u>and 5</u> of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing or terrorist financing as defined in Article 1, point 5 of that Directive.</p>	
<p>For the purposes of point (e) of this paragraph, the competent authorities shall endeavor to use the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010.</p>	

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<p>4. For the purposes of assessing whether the condition laid down in paragraph 3, point (f), is met, competent authorities shall consult the authority <u>or authorities</u> responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849 and obtain written confirmation that the condition is fulfilled before proceeding to authorising the third country branch.</p>	
<p>5. When the competent authority considers that a third country branch authorised before [OP please insert the date = 24 months from date of application of this amending Directive] complies with the minimum requirements as set out in Title VI of this Directive, it may allow this third country branch to continue its activities without being subject to new authorisation in accordance with this Chapter.</p> <p><u>5. Competent authorities may decide that the authorisations of third country branches granted before [OP please insert the date = 24 months from date of application of this amending Directive] shall remain valid, provided that the third country branches that were granted those authorisations comply with the minimum requirements laid down in this Title as amended by [this Directive].</u></p>	
<p>5. EBA shall develop draft regulatory technical standards to further specify:</p>	

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(a) — the information to be provided to the competent authorities upon application for authorisation of a third country branch, including the programme of operations and the structural organisation and governance arrangements referred to in paragraph 2;	
(b) — the procedure for authorisation of the third country branch, as well as the standard forms and templates for the provision of the information referred to in point (a) of this paragraph;	
(c) — the conditions for authorisation referred to in paragraph 3.	
EBA shall submit these draft regulatory technical standards to the Commission by [OP please insert the date – 6 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Article 48d Conditions for the refusal or withdrawal of a third country branch's authorisation	
1. Member States shall, at a minimum, provide for the following conditions for refusing or withdrawing the authorisation of a third country	

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branch:	
(a) the third country branch does not meet the requirements for authorisation laid down in Article 48c or in national law;	
(b) the third country branch's head undertaking or its group do not meet the prudential requirements that apply to them under the third country law or there are reasonable grounds to suspect that they do not meet or that they will breach those requirements within the following 12 months.	
For the purposes of point (b) of this paragraph, third country branches shall promptly notify their competent authorities where the circumstances referred to in that point have taken place.	
2. Without prejudice to paragraph 1, competent authorities may withdraw the authorisation granted to a third country branch where any of the following conditions is met:	
(a) the third country branch does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;	
(b) the third country branch has obtained the authorisation through false statements or any other irregular means;	

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(c) the third country branch no longer fulfils any additional conditions or requirements under which the authorisation was granted;	
(d) the third country branch can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;	
(e) the third country branch falls within one of the other cases where national law provides for withdrawal of authorisation;	
(f) the third country branch commits one of the breaches referred to in Article 67(1), <u>where applicable</u> ;	
(g) there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted in connection with the third country branch, its head undertaking or its group, or there is <u>a heightened an increased</u> risk of money laundering or terrorist financing being committed or attempted in relation to the third country branch, its head undertaking or its group.	
3. For the purposes of assessing whether the condition laid down in paragraph 2(g) is met, the competent authorities shall consult the authority <u>or authorities</u> responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849.	

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4. The EBA shall develop draft regulatory technical standards to specify:	
(a) — the conditions laid down in paragraphs 1 and 2 for refusing or withdrawing a third country branch's authorisation;	
(b) — the procedure to withdraw the third country branch's authorisation;	
(c) — the content and process of the notification to the competent authorities referred to in the last subparagraph of paragraph 1 of this Article.	
EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Sub-section 2	
Minimum regulatory requirements	
Article 48e	
Capital endowment requirement	
1. Without prejudice to other applicable capital requirements in	

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accordance with national law, Member States shall require that third country branches maintain at all times a minimum capital endowment that is at least equal to:	
(a) for class 1 third country branches, +2 % of the branch's average liabilities as reported for the three immediately preceding annual reporting periods in accordance with Sub-section 4, subject to a minimum of EUR 10 million;	(a) for class 1 third country branches, +2 % of the branch's average liabilities as reported for the three immediately preceding annual reporting periods or, for newly authorised third country branches, of the branch's liabilities at the time of authorisation in accordance with Sub-section 4, subject to a minimum of EUR 10 million;
(b) for class 2 third country branches, EUR 5 million.	
2. Third country branches shall fulfil the minimum capital endowment requirement referred to in paragraph 1 with assets in the form of any of the following:	
(a) cash or cash assimilated instruments as defined in Article 4(1), point 60, of Regulation (EU) No 575/2013;	
(b) debt securities issued by central governments or central banks of Union Member States; or	
(c) any other instrument that is available to the third country branch for unrestricted and immediate use to cover risks or losses as soon as those occur.	
3. Member States shall require third country branches to deposit the	

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<p>capital endowment instruments referred to in paragraph 2 in an escrow account <u>held in the Member State where the branch is authorised</u> with a credit institution <u>that is not part of its head undertaking's group in the Member State where the branch is authorised</u> or, where permitted under national law, with the central bank of the Member State. The capital endowment instruments deposited in the escrow account shall be pledged or assigned by way of security in favour of the resolution an <u>authority or entity</u> defined through national law to secure the claims of the third country branch's creditors in case of insolvency or available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of <u>resolution of the third country branch and for the purposes of the winding-up of the third country branch in accordance with the national law of the Member State.</u> Member States shall lay down rules to grant the resolution authority <u>This authority or entity shall be granted</u> the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g.</p>	
<p>4. The EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirement laid down in paragraph 2, point (c) of this Article in relation to instruments that are available for unrestricted and immediate use to cover risks or</p>	


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losses as soon as those occur. The EBA shall issue those guidelines by {OP please insert the date – 12 months from date of entry into force of this amending Directive}.	
Article 48f Liquidity requirements	
1. Without prejudice to other applicable liquidity requirements in accordance with national law, Member States shall at a minimum require third country branches to maintain at all times a volume of unencumbered and liquid assets sufficient to cover its net liquidity outflows over a minimum stress period of 30 days.	
2. For the purposes of paragraph 1, Member States shall require class 1 third country branches to comply with the liquidity coverage requirement laid down in Part Six, Title I of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61 ^{*9} .	
3. Member States shall require third country branches to deposit the liquid assets held to comply with this Article in an eserow account held in the the Member State where the branch is authorised with a credit institution that is not part of its head undertaking's group in the Member State where the branch is authorised or, where permitted under national law, with the central bank of the Member State. The liquid	

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<p>assets deposited in the escrow account shall be pledged or assigned by way of security in favor of the resolution authority to secure the claims of the third country branch's creditors. Member States shall lay down rules to grant the resolution authority the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g. <u>Member States shall set national rules to secure the claims of the third country branch's creditors in case of insolvency or resolution of the third country branch's head undertaking. For these purposes, an authority or public body shall be granted the power to act in a fiduciary capacity for the benefit of those creditors for the purpose of this Article and Article 48g. Where there are liquid assets remaining in the account after they have been applied to cover liquidity outflows in accordance with paragraph 1, those remaining liquid assets shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third country branch and for the purposes of the winding-up of the third country branch in accordance with the national law of the Member State.</u></p>	
<p>4. Competent authorities may waive the liquidity requirement laid down in this Article for qualifying third country branches.</p>	

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<p>^{*9} Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).</p>	
<p>Article 48g</p> <p>Insolvency and resolution of third country branches</p>	
<p>1. Member States shall ensure that, in the event of insolvency or resolution of a third country branch pursuant to Article 96 of Directive 2014/59/EU, resolution authorities are vested with legal power and authority to enforce the security created over the liquid assets and capital endowment instruments held in the escrow account pursuant to Articles 48e(3) and 48f(3) of this Directive. When dealing with those liquid assets and capital endowment instruments following the enforcement of security, resolution authorities shall take into account the existing national rules, as well as supervisory and judicial powers, and ensure adequate coordination with the national administrative or judicial authorities, in accordance with national insolvency law and the principles set out in Article 96 of Directive 2014/59/EU, as appropriate.</p>	
<p>2. Any surplus of liquid assets or capital endowment instruments held in the escrow account and not used in accordance with paragraph 1 shall be</p>	

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dealt with in accordance with the applicable national law.	
Article 48h Internal governance and risk controls	
1. Member States shall require third country branches to have at least two persons <u>in the relevant Member State</u> effectively directing their business in the Member State subject to prior approval by the competent authorities. Those persons shall be of good repute and possess sufficient knowledge, skills and experience and commit sufficient time to the performance of their duties.	
2. Member States shall require class 1 third country branches to comply with Articles 74, and 75, and Article 76(5), <u>and Articles 92, 94 and 95.</u> Competent authorities may require third country branches to establish a local management committee to ensure an adequate governance of the branch.	
3. Member States shall require class 2 third country branches to comply with Articles 74, and 75 and to have internal control functions as provided for under Article 76(5), first, second and third subparagraphs. <u>Class 2 third country branches shall also comply with articles 92, 94 and 95.</u>	
Depending of their size, internal organisation and the nature, scope and complexity of their activities, competent authorities may require class 2	

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third country branches to appoint heads of internal control functions as provided under Article 76(5), fourth and fifth subparagraphs.	
4. Member States shall require third country branches to establish reporting lines to the management body of the head undertaking that cover all material risks and risk management policies and changes thereof and have in place adequate ICT systems and controls to ensure that policies are duly complied with.	
5. Member States shall require third country branches to monitor and manage their outsourcing arrangements, and to ensure that their competent authorities have full access to all information they need to fulfil their supervisory function.	
6. Member States shall require third country branches that engage in back-to-back or intragroup operations to have adequate resources to identify and properly manage their counterparty credit risk where material risks associated with assets booked by the third country branch are transferred to the counterparty.	
7. Where critical or important functions <u>of the third country branch</u> are delegated to the <u>carried out by its</u> head undertaking <u>according to internal arrangements or intragroup agreements of any type</u> , competent authorities in charge of the supervision of third country branches shall have access to all information they need to fulfil their	

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supervisory function.	
8. Competent authorities shall periodically require that an independent third party assesses the implementation of and on-going compliance with the requirements laid down in this Article and addresses a report to the competent authority with its findings and conclusions.	
9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the application to third country branches of the arrangements, processes and mechanisms referred to in Article 74(1), taking into account Article 74(2), and on the application to third country branches of Article 75 and Article 76(5), by [OP please insert the date = 6 months from date of entry into force of this amending Directive].	
<u>10. Paragraphs 1 to 8 shall not prevent Member States from applying in full or in part the requirements set out in Section II, Chapter 2 of Title VII to third country branches subject to the treatment provided for in Article 48a(4).</u>	<u>10. Paragraphs 1 to 8 shall not prevent Member States from applying in full or in part the requirements set out in Section II, Chapter 2 of Title VII to third country branches subject to the treatment provided for in Article 48a(4).</u>
Article 48i Booking requirements	
1. Member States shall require third country branches to maintain a registry book enabling those <u>third country</u> branches to track and keep a comprehensive and precise record of all the assets and liabilities	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>associated with the activities of the third country branch in the Member State and to manage those assets and liabilities autonomously within the <u>third country</u> branch. The registry book shall provide sufficient information on the risks generated by the third country branch and on how they are managed.</p>	
<p>2. Member States shall require third country branches to develop <u>approve</u> <u>and regularly review and update a policies policy</u> on booking arrangements for the management of the registry book referred to in paragraph 1 for the purposes laid down therein. Those <u>Such policy policies</u> shall be documented and validated <u>approved</u> by the relevant governing body of the third country branch's head undertaking. The policy document referred to in this paragraph shall provide a clear rationale for the booking arrangements and set out how those arrangements align with the third country branch's business strategy.</p>	<p>2. Member States shall require third country branches to develop <u>approve develop and regularly review and update a policies policy</u> on booking arrangements for the management of the registry book referred to in paragraph 1 for the purposes laid down therein. Those <u>Such policy policies</u> shall be documented and validated <u>approved</u> by the relevant governing body of the third country branch's head undertaking. The policy document referred to in this paragraph shall provide a clear rationale for the booking arrangements and set out how those arrangements align with the third country branch's business strategy.</p>
<p>3. Competent authorities shall require that an independent written and reasoned opinion on the implementation of and on-going compliance with the requirements laid down in this Article be regularly prepared and addressed to the competent authority with its findings and conclusions.</p>	
<p>4. EBA shall develop draft regulatory technical standards to specify the booking arrangements that third country branches shall apply for the</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
purposes of this Article, in particular as regards:	
(a) the methodology to be used by the third country branch to identify and keep a comprehensive and precise track record of the assets and liabilities associated with <u>of</u> the third country branch's activities in the Member State; and	
(b) the specific treatment to identify and keep a record of <u>off-balance sheet items and of</u> the assets and liabilities originated by the third country branch and booked or held remotely in other branches or subsidiaries of the same group on behalf of or for the benefit of the originating third country branch.	
EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Sub-section 3 Power to require authorisation under Title III and requirements on systemic branches	
Article 48j	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Power to require establishing a subsidiary	
1. Member States shall ensure that competent authorities have the power to require third country branches to apply for authorisation under Title III, Chapter 1, at least where:	
(a) — the third country branch has engaged in the past or currently engages in interconnected activities with other third country branches or subsidiary institutions of the same group or in one of the activities referred to in Article 47(1) with customers or counterparts in other Member States in contravention of the internal market rules; or	
(b) — the third country branch meets the systemic importance indicators referred to in Article 131(3) and poses a significant risk to the financial stability of the Union or the Member State where it is established.	
2. Before making the decision referred to in paragraph 1, competent authorities shall consult the competent authorities of the Member States where the relevant third country group has other third country branches and subsidiary institutions.	
Where they disagree, the competent authorities of the third country group in other Member States may refer the matter to the EBA for mediation in accordance with Article 19 of Regulation (EU) No	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
1093/2010. EBA shall take its decision within one month of matter being referred and the competent authority of the relevant third country branch shall refrain from taking its decision during that time.	
The competent authority of the relevant third country branch shall adopt the decision referred to in paragraph 1 in conformity with the decision of EBA.	
3. Before imposing the requirement laid down in this Article on a third country branch in accordance with paragraph 1, point (a), the competent authority shall request EBA to issue a recommendation in accordance with Article 16 of Regulation (EU) No 1093/2010 on the interpretation of that point in relation to that third country branch.	
4. EBA shall develop draft regulatory technical standards to specify the systemic importance indicators referred to in Article 131(3) as regards third country branches for the purposes of paragraph 1, point (b), of this Article and Article 48k. EBA shall have regard to the following items:	
(a) — the types of activities and services provided and the operations being conducted by the third country branch and, in particular, whether the third country branch provides those activities and services and conducts those operations with a very narrow set of	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
customers or counterparts;	
(b) — the complexity of the third country branch's structure, organisation and business model;	
(c) — the degree of interconnectedness of the third country branch with the financial system of the Union and of the Member State where it is established;	
(d) — the substitutability of the activities, services or operations conducted or of the financial infrastructure provided by the third country branch;	
(e) — the market share of the third country branch in the Union and in the Member States where it is established as regards total banking assets and in relation the activities and services it provides and the operations that it conducts;	
(f) — the likely impact that a suspension or closure of the third country branch's operations or business could have on systemic liquidity or the payment, clearing and settlement systems in the Union and in the Member State where it is established;	
(g) — the likely impact that a suspension or closure of the third country branch's operations could have on intragroup financing agreements or intragroup services covering critical functions in the	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Union and in the Member States where it is established;	
(h) — the cross border activity of the third country branch with its head undertaking and with counterparts in other third countries;	
(i) — the role and importance of the third country branch for the activities, services and operations of the third country group in the Union and in the Member State where it is established;	
(j) — the volume of the third country group's business being conducted through third country branches, relative to the business of that same group conducted through subsidiary institutions authorised in the Union and in the Member State where the third country branches are established;	
(k) — whether the third country branch is a qualifying third country branch in accordance with Article 48b.	
EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Article 48k	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Assessment of systemic importance and requirements on systemic third country branches	
1. The third country branch or branches in the Union that belong to the same third country group shall be subject to the assessment laid down in paragraph 2 of this Article where the aggregate amount of assets that they hold on their books in the Union as reported in accordance with Sub-section 4 is equal to or higher than EUR 30 billion, either:	
(a) — on average for the immediately preceding three annual reporting periods; or	
(b) — in absolute terms for at least three annual reporting periods during the immediately preceding five annual reporting periods.	
2. Competent authorities shall assess whether the third country branches referred to in paragraph 1 have systemic importance for the Union and for the Member States where they are established. For those purposes, competent authorities shall assess whether those third country branches meet the indicators of systemic importance referred to in Article 48j(4) and Article 131(3).	
3. The assessment of systemic importance referred to in paragraph 2 of this Article shall be performed by one of the following:	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(a) — where Article 111 applies to the relevant third country group, the consolidated supervisor of that third country group in the Union in accordance with that Article;	
(b) — where Article 111 does not apply to the relevant third country group, the competent authority that would become the consolidated supervisor of that third country group in the Union in accordance with that Article, should the third country branches be treated as subsidiary institutions;	
(c) — where the third country group has third country branches and subsidiary institutions in only one Member State, the competent authority of that Member State; or	
(d) — EBA where, after three months from the starting date of the annual reporting period immediately following the last annual reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1 of this Article:	
(i) — the assessment has not been commenced by either of the competent authorities referred to in points (a), (b) or (c); or	
(ii) — the competent authority that would be the consolidated supervisor in accordance with point (b) has not been determined.	
The competent authorities referred to in points (a) and (b), acting as	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>“lead competent authority”, or, where applicable, EBA shall conduct the assessment in full cooperation with all the competent authorities concerned. The competent authorities concerned shall assist and provide all the necessary documentation to the lead competent authority or, where applicable, EBA. For those purposes, ‘competent authorities concerned’ shall mean all the authorities responsible for the supervision of the third country branches and subsidiary institutions of the relevant third country group in the Union.</p>	
<p>Before the assessment of systemic importance is concluded, the lead competent authority, the competent authority referred to in point (c) or, where applicable, EBA shall hear the third country group and shall set reasonable timeframes for the third country group to submit documentation and make its views known in writing.</p>	
<p>4. The lead competent authority shall conclude the assessment referred to in paragraph 2 and issue a report by no later than six months from the starting date of the annual reporting period immediately following the last reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1. Where, in accordance with paragraph 3, EBA is conducting the assessment, that period shall start to count from the date on which EBA became responsible for conducting the assessment. The report</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
shall lay down the following:	
(a) the assessment of systemic importance, which shall set out a clear and detailed analysis of the systemic importance indicators referred to in paragraph 2 in relation to the relevant third country branches and the lead competent authority's or, where applicable, EBA's conclusion;	
(b) where the lead competent authority or, where applicable, EBA concludes that the third country branches are systemic, a proposed draft decision either:	
(i) to require the third country branches to apply for authorisation under Title III, Chapter 1;	
(ii) to require the third country branches to restructure their assets or activities in the Union in such a manner that they cease to qualify as systemic in accordance with paragraph 2 of this Article;	
(iii) to impose additional requirements on the third country branches or the subsidiary institutions of the third country group in the Union in accordance with Article 48p or Title VII, Chapter 2, Section IV, respectively;	
(iv) not to impose any of the requirements referred to in points (i) to (iii) for a deferral period not exceeding 12 months and subject to	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
conducting a new assessment of the third country branches before the expiry date of that period.	
(c) — the rationale of the proposed draft decision referred to in point (b), which shall set out a detailed explanation of how the decision relates back to the assessment referred to in point (a).	
The lead competent authority or, where applicable, EBA shall only propose the decision referred to in point (b)(iv) where it can justify that the absence of requirements on the third country branches under this Article would not lead to a significant increase in the risk that those branches pose to financial stability and market integrity of the Union or the Member States during the deferral period referred to in that point.	
Where applicable, the references to ‘lead competent authority’ in this Article shall be understood as references to the competent authority referred to in paragraph 3, point (c). Where that competent authority is responsible for issuing the report laid down in this paragraph, the decision set out therein shall enter into force on the date of its notification to the third country branches. The competent authority shall also notify the decision to EBA.	
5. The lead competent authority or, where applicable, EBA shall submit the report referred to in paragraph 5 to the competent	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
authorities concerned. The lead competent authority and the competent authorities concerned shall do their best endeavours to reach a joint decision by consensus on the report and, where applicable, the draft decision within three months from the date on which the report was transmitted.	
Where the competent authorities fail to reach a consensus after the end of the three month period referred to in the first subparagraph, the joint decision shall be made within the month immediately following the end of the preceding three month period by a majority of votes cast. For those purposes, the voting stakes shall be allocated to the competent authorities in accordance with the following:	
(a) — subject to point (b), each competent authority, including the lead competent authority, shall be entitled to a voting stake equal to the percentage of assets of the third country group under its supervision relative to the total assets of that group in the Union;	
(b) — the voting stake of the lead competent authority shall be increased up to 25 % where it did not reach that percentage in accordance with point (a);	
(c) — where the voting stake of the lead competent authority has been increased to 25 % in accordance with point (b), the voting stakes of the remaining competent authorities that result from point	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(a) shall be adjusted as appropriate as stakes on the remaining 75 % of the voting rights.	
For the purposes of point (a), the assets held in both the third country branches and subsidiary institutions of the third country group shall be included in the calculation.	
After its adoption, the joint decision shall enter into force on the date it is notified to the third country branches. The joint decision shall also be notified to the EBA.	
6. The third country branches shall have a period of three months from the date of the decision's entering into force in accordance with paragraphs 5 or 6 to comply with the requirements laid down in that decision.	
Where the third country branches are required to apply for authorisation as institutions in accordance with Title III, Chapter 1, their authorisation under this Title shall remain valid on an interim basis until the expiry of the deadline referred to in the first subparagraph of this paragraph is reached or, as the case may be, until the completion of the authorisation process as institutions. The third country branches may request the competent authority to extend the three-month deadline referred to in the first subparagraph where they can justify the need for such an extended	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
deadline to comply with the relevant requirement imposed on them.	
Where the threshold referred to in paragraph 1 is met by aggregation of assets of various branches, the competent authorities may impose the requirement referred to in this subparagraph in decreasing asset size order up to the point in which the total assets remaining on the books of the third country branches in the Union is less than EUR 30 billion.	
7. EBA shall develop draft regulatory technical standards to specify the rules of construction for the interpretation of Article 111 of this Directive for the purposes of determining the hypothetical consolidated supervisor as referred to in paragraph 3, point (b), of this Article.	
EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date – 12 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Sub-section 4 Minimum R eporting requirements	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>Article 48l</p> <p>Regulatory, <u>and</u> financial <u>information of the third country branch</u> and <u>of the</u> head undertaking <u>information</u></p>	
<p>1. Member States shall, <u>at a minimum</u>, require third country branches to periodically report to their competent authorities information on:</p>	
<p>(a) the assets and liabilities held on their books in accordance with Article 48i, with a breakdown that singles out:</p>	
<p>(i) the largest recorded assets and liabilities classified by sector and counterparty type (including, in particular, financial sector exposures);</p>	
<p>(ii) significant exposure and funding source concentrations to specified types of counterparties;</p>	
<p>(iii) significant internal transactions with the head undertaking and with members of the head undertaking's group;</p>	
<p>(b) the third country branch's compliance with the requirements that apply to them under this Directive;</p>	
<p>(c) on an <i>ad hoc</i> basis, the deposit protection arrangements available to depositors in the third country branch in accordance with Article 15(2) and (3) of Directive 2014/49;</p>	
<p>(d) additional regulatory requirements imposed on the third country branch by Member States under national law.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
For the purposes of reporting the information on the assets and liabilities held on their books in accordance with point (a), third country branches shall apply the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 ^{*10} or the applicable GAAP in the Member State.	
2. Member States shall require third country branches to report to their competent authorities the following information on their head undertaking:	
(a) on a periodic basis, aggregated information on the assets and liabilities held or booked, respectively, by the subsidiaries and other third country branches of that head undertaking's group in the Union;	
(b) on a periodic basis, the head undertaking's compliance with its applicable prudential requirements on an individual and consolidated basis;	
(c) on an <i>ad hoc</i> basis, significant supervisory reviews and assessments when those are conducted on the head undertaking and the consequent supervisory decisions;	
(d) the recovery plans of the head undertaking and the specific measures that could be taken on the third country branch in accordance with those plans, and any subsequent updates and amendments to those plans;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(e) the head undertaking's business strategy in relation to the third country branch, and any subsequent changes to that strategy;	
(f) the services provided by the head undertaking to eligible counterparties or professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU established or situated in the Union on the basis of reverse solicitation of services. in accordance with Article 21e of this Directive. For this purpose these purposes, reverse solicitation shall have the same meaning as in be understood in accordance with Article 42 of Directive 2014/65/EU.	
3. The reporting obligations laid down in this Article shall not prevent:	3. The reporting obligations laid down in this Article shall not prevent:
(a) competent authorities from imposing additional ad hoc reporting requirements on third country branches where the competent authority deems the additional information necessary to gain a comprehensive view of the branch's or its head undertaking's business, activities or financial soundness, verify the branch's and its head undertaking's compliance with applicable laws and ensure the branch's compliance with those laws; or	(a) competent authorities from imposing additional ad hoc reporting requirements on third country branches where the competent authority deems the additional information necessary to gain a comprehensive view of the branch's or its head undertaking's business, activities or financial soundness, verify the branch's and its head undertaking's compliance with applicable laws and ensure the branch's compliance with those laws. or
(b) Member States from applying in full or in part the reporting requirements set out in Part Seven A of Regulation (EU) No 575/2013 to third country branches subject to the treatment provided for in	(b) Member States from applying in full or in part the reporting requirements set out in Part Seven A of Regulation (EU) No 575/2013 to third country branches subject to the treatment

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>Article 48a(4).</u>	provided for in Article 48a(4).

*10 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).'	
Article 48m Standard forms and templates and frequency of reporting	
1. EBA shall develop draft implementing technical standards to specify the uniform formats, definitions, the IT solutions and the frequency of reporting to be applied for the purposes of Article 48l.	
The reporting requirements referred to in the first subparagraph shall be proportionate to the classification of third country branches as either class 1 or class 2.	
EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].	
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.	
2. The regulatory and financial information referred to in this Article shall	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
be reported at least <u>twice a year</u> biannually by class 1 third country branches and at least annually by class 2 third country branches.	
3. Competent authorities may waive all or part of the requirements to report information on the head undertaking laid out in paragraph 48l(3) for qualifying third country branches, provided that the competent authority is able to obtain the relevant information directly from the supervisory authorities of the relevant third country.	
<u>4. This Article shall not apply to those third country branches that are subject to the treatment provided for in Article 48a(4) to the extent that they are required to use the standard forms and reporting templates and comply with the frequency of reporting laid down in Article 430 of Regulation (EU) No 575/2013.</u>	4. This Article shall not apply to those third country branches that are subject to the treatment provided for in Article 48a(4) to the extent that they are required to use the standard forms and reporting templates and comply with the frequency of reporting laid down in Article 430 of Regulation (EU) No 575/2013.
Section III	
Supervision	
Article 48n Third country branches supervision and supervisory examination programme	
1. Member States shall require that competent authorities comply with this Section and, mutatis mutandis, with Title VII for the purposes of supervising third country branches.	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>Where Member States make use of the discretion referred to in Article 48a(4), they shall require that competent authorities comply with Title VII of this Directive, instead of with this Section, for the purposes of supervising third country branches subject to the treatment provided for in that Article.</u></p>	<p>Where Member States make use of the discretion referred to in Article 48a(4), they shall require that competent authorities comply with Title VII of this Directive, instead of with this Section, for the purposes of supervising third country branches subject to the treatment provided for in that Article.</p>
<p>2. Competent authorities shall include third country branches in the supervisory examination programme referred to in Article 99.</p>	
<p>Article 48o</p> <p>Supervisory review and evaluation</p>	
<p>1. Member States shall require that competent authorities review the arrangements, strategies, processes and mechanisms implemented by third country branches to comply with the provisions that apply to them under this Directive and, where applicable, any additional regulatory requirements under national law.</p>	
<p>2. On the basis of the review conducted in accordance with paragraph 1, the competent authorities shall evaluate whether the arrangements, strategies, processes and mechanisms implemented by the third country branches and the capital endowment and liquidity held by them ensure a sound management and coverage of their material risks and the viability of the branch.</p>	
<p>3. Competent authorities shall conduct the review and evaluation referred</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>to in paragraphs 1 and 2 in accordance with the principle of proportionality, as published in accordance with Article 143(1), point (c). In particular, competent authorities shall establish a frequency and intensity for the review referred to in paragraph 1 that is proportionate to the classification as class 1 and 2 third country branches and that takes into account other relevant criteria, such as the nature, scale and complexity of the third country branches' activities.</p>	
<p>4. Where a review, in particular the evaluation of the governance arrangements, the business model, or the activities of a third country branch, gives competent authorities reasonable grounds to suspect that, in connection with that third country branch, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify EBA and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849. Where there is an increased risk of money laundering or terrorist financing, the competent authority and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849 shall liaise and notify their common assessment immediately to EBA. The competent authority shall take, as appropriate, measures in accordance with this Directive, which may include withdrawing the third country branch's permission in accordance</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
with Article 48d(2), point (g).	
<p>5. Competent authorities, financial intelligence units and authorities that supervise third country branches shall cooperate closely with each other within their respective competences and shall exchange information relevant to this Directive, provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising third country branches are located. EBA may assist the competent authorities and the authorities in charge of supervising the third country branch in accordance with Directive (EU) 2015/849 in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative. In such an event, EBA shall act in accordance with Article 19(1), second subparagraph, of Regulation (EU) No 1093/2010.</p>	
<p>6. EBA shall develop draft regulatory technical standards develop <u>Guidelines</u> to further specify:</p>	
<p>(a) the common procedures and methodologies for the supervisory review and evaluation process referred to in this Article and for the assessment of the treatment of material risks;</p>	
<p>(b) the mechanisms for cooperation and information exchange</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
between the authorities referred to in paragraph 5 of this Article, in the context of identifying serious breaches of anti-money laundering rules.	
For the purposes of point (a), the procedures and methodologies referred to therein shall be laid down in a manner that is proportionate to the classification of the third country branches as class 1 or class 2, and to other appropriate criteria such as the nature, scale and complexity of their activities.	
EBA shall submit those draft regulatory technical standards to the Commission issue those guidelines by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].	
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Article 48p Supervisory measures and powers	
1. Competent authorities shall require third country branches to take the necessary measures at an early stage in order to:	
(a) ensure that the third country branches comply with the requirements that apply to them under this Directive and under national law or to restore compliance with those requirements; and	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(b) to ensure that the material risks that the third country branches are exposed to are covered and managed in a sound and sufficient manner and that those branches remain viable.	
2. Competent authorities' powers for the purposes of paragraph 1 shall include, at least, the power to require third country branches to:	
(a) hold an amount of capital endowment in excess of the minimum requirements laid down in Article 48e or to comply with other additional capital requirements. Any additional capital endowment amount to be held by the third country branch in accordance with this point shall comply with the requirement laid down in Article 48e;	
(b) meet other specific liquidity requirements in addition to the requirement laid down in Article 48f. Any additional liquid assets to be held by the third country branch in accordance with this point shall comply with the requirements laid down in Article 48f;	
(c) reinforce their governance, risk control or booking arrangements;	
(d) restrict or limit the scope of their business or of the activities they conduct, as well as the counterparties to those activities;	
(e) reduce the risk inherent in their activities, products and systems, including outsourced activities, and stop engaging or offering such activities or products;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(f) comply with additional reporting requirements in accordance with Article 48l(3) or increase the frequency of the regular reporting;	
(g) make public disclosures.	
<p>3. When the competent authority of the Member State where the branch is established, or where appropriate the designated authorities of the Member State where the branch is established, assess that a third country branch has a systemic importance for its Member State, that authority shall have the power:</p> <p><u>3. Competent authorities, or where appropriate the designated authorities, shall assess the financial stability risks that third country branches that are considered as systemic pose for the Member State where they are established. Those authorities shall be granted with the following powers to address the actual or potential financial stability risks identified in relation to third country branches assessed as systemic:</u></p>	
<p><u>(i-a) to require that the relevant third country branch apply applies for authorisation as a subsidiary institution under Title III, Chapter 1;</u></p>	
<p><u>(ii-b) to require that the relevant third country branch restructure its assets or activities;</u></p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>(iii-c) to impose additional prudential requirements in accordance with this Title on the relevant third country branch.</u>	<u>(iii-c) to impose additional prudential requirements in accordance with this Title on the relevant third country branch.</u>
<u>4. For the purposes of conducting the assessment referred to in paragraph 3, the competent authorities, or where appropriate designated authorities, shall take into account appropriate criteria of systemic importance of third country branches, which shall include in particular:</u>	
<u>(a) the size of the third country branch;</u>	
<u>(b) the type of business that the third country branch conducts;</u>	
<u>(c) the degree of interconnectedness of the third country branch with the financial system of the Member State where it is established;</u>	
<u>(d) the substitutability of the activities, services or operations conducted of the financial infrastructure provided by the third country branch;</u>	
<u>(e) the market share of the third country branch in the Member State where it is established as regards total banking assets and in relation the activities, services and the operations that it conducts;</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>(f) the likely impact that a suspension or closure of the third country branch's operations or business could have on the liquidity of the financial system of that Member State or the payment, clearing and settlement systems in the Member State where it is established;</u>	
<u>(g) the role and importance of the third country branch for the activities, services and operations of the third country group in the Member State where it is established;</u>	
<u>(h) the role and importance of the third country branch in the context of resolution or winding up based on information from the resolution authority.</u>	
<u>5. By [date: 31/12/2025] EBA shall submit a report to the European Parliament, to the Council and to the Commission, taking due account of the geographical limitations applicable to the authorisations granted to third country branches in accordance with point (d) of paragraph 3 of Article 48c, on the merit of:</u>	
<u>(a) performing an assessment of the systemic importance for the Union of a third country group on the basis of systemicity criteria defined in aggregate at the level of the Union ; EBA shall report on such possible criteria;</u>	<u>(a) performing an assessment of the systemic importance for the Union of a third country group on the basis of systemicity criteria defined in aggregate at the level of the Union. 4 The EBA shall report on such possible criteria;</u>

CRD Presidency compromise text

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>(b) introducing a cooperation mechanism among concerned competent authorities, in order for them to perform this assessment jointly; or any other mechanism fostering the exchange of the relevant information; in this regard, EBA shall set out how such mechanism would be articulated with the supervisory powers of the concerned competent authorities with respect to the branches established in their Member States.</u></p>	<p><u>(b) introducing a cooperation mechanism among concerned between the competent authorities concerned, in order for them to perform this assessment jointly; or any other mechanism fostering the exchange of the relevant information; in this regard, the EBA shall set out how such mechanism would be articulated with the supervisory powers of the concerned competent authorities concerned with respect to the branches established in their Member States.</u></p>
<p>Article 48q</p> <p>Cooperation between competent authorities and colleges of supervisors</p>	
<p>1. Competent authorities supervising third country branches and subsidiary institutions of the same third-country group shall cooperate closely and share information with each other. The competent authorities shall have written coordination and cooperation arrangements in place in accordance with article 115.</p>	
<p>2. For the purposes of paragraph 1, class 1 third country branches shall be subject to the comprehensive supervision of a college of supervisors in accordance with Article 116, subject to the following requirements:</p>	
<p>(a) where a college of supervisors has been established in relation to the subsidiary institutions of a third country group, the class 1 third</p>	

CRD Presidency compromise text

Table 2 of 3

2 nd Presidency compromise	Changes following comments on the 2nd compromise
country branches of the same group shall be included within the scope of that college of supervisors;	
(b) where the third country group has class 1 third country branches in more than one Member State but no subsidiary institutions in the Union subject to Article 116, a college of supervisors shall be established in relation to those class 1 third country branches;	
(c) where the third country group has class 1 third country branches in more than one Member State or at least one class 1 third country branch, and one or more subsidiary institutions in the Union that are not subject to Article 116, a college of supervisors shall be established in relation to those third country branches and subsidiary institutions.	
3. For the purposes of paragraph 2, points (b) and (c), there shall be a lead competent authority that performs the same role as the consolidating supervisor in accordance with Article 116. The lead competent authority shall be that of the Member State with the largest third country branch in terms of total value of booked assets.	
4. In addition to the tasks set out in Article 116, the colleges of supervisors shall:	
(a) prepare a report on the structure and activities of the third country group in the Union and update this report on an annual basis;	

CRD Presidency compromise text

Table 2 of 3

2 nd Presidency compromise	Changes following comments on the 2nd compromise
(b) exchange information on the results of the supervisory review and evaluation process referred to in Article 48o;	
(c) endeavour to align the application of the supervisory measures and powers referred to in Article 48p.	
5. The college of supervisors shall ensure appropriate coordination and cooperation with relevant third country supervisory authorities where appropriate.	
6. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010.	
7. EBA shall develop draft regulatory technical standards to specify:	
(a) the mechanisms of cooperation and the draft model agreements between competent authorities for the purposes of paragraph 1 of this Article; and	
(b) the conditions for the functioning of colleges of supervisors for the purposes of Articles 2 to 6 of this Article.	
EBA shall submit those draft technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].	

CRD Presidency compromise text

Table 2 of 3

2 nd Presidency compromise	Changes following comments on the 2nd compromise
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
Article 48r Reporting-Notification to the EBA	
Competent authorities shall notify EBA the following:	
(a) all the authorisations granted to third country branches and any subsequent changes to such authorisations;	
(b) total assets and liabilities booked by the authorised third country branches, as periodically reported;	
(c) the name of the third country group to which an authorised third country branch belongs.	
EBA shall publish on its website a list of all third country branches authorised to operate in the Union in accordance with this Title, indicating the Member State in which they are authorised to operate.	
Chapter 2	
Relation with third countries	
Article 48s Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis	

CRD Presidency compromise text

Table 2 of 3

2 nd Presidency compromise	Changes following comments on the 2nd compromise
1. The Union may conclude agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:	
(a) institutions the parent undertakings of which have their head offices in a third country;	
(b) institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in the Union.	
2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:	
(a) the competent authorities of Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;	
(b) the supervisory authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation therein; and	

CRD Presidency compromise text

Table 2 of 3

2 nd Presidency compromise	Changes following comments on the 2nd compromise
(c) the EBA is able to obtain from the competent authorities of the Member States the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.	
3. Without prejudice to Article 218 TFEU, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.	
4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.;	
<p><u>[NEW: Point 11 of the the Presidency non-paper called “Other CRR and CRD issues” on enhanced cooperation between tax authorities and financial supervisors was discussed for the first time during the Working Party on May 2nd. In the written comments, Membres States have generally welcomed the opportunity to address this issue in the text. However, several Member States have requested further discussions on this topic and a number of questions were raised on the scope and the conditions of such a mechanism. In addition, some Member States have expressed reservations. Given the appetite to discuss this topic in further details before going forward with drafting suggestions, the Presidency would suggest another discussion on this issue before going forward with drafting proposals.]</u></p>	

CRD Presidency compromise text

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>(8a) in Article 53 (1), subparagraph 2 is replaced by the following:</u>	
<u>‘Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal or taxation law.’;</u>	
<u>(8b) in Article 56 the following second subparagraph is added:</u>	
<u>‘Article 53(1) and 54 shall not preclude the exchange of information between competent authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where the information originates in another Member State, it shall only be disclosed in accordance with the first sentence of this subparagraph with the express agreement of the competent authorities which have disclosed it.’;</u>	
CRD - Continues in Table 3	



Council of the European Union
General Secretariat

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Brussels, 24 October 2022

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Basel III finalisation) Financial Services Attachés
Subject:	Basel 3 finalisation: CRD - CZ Presidency revised compromise text, Table 2 of 3