

EBA/CP/2025/22

03/11/2025

Consultation Paper

Draft Guidelines

On the authorisation of third country
branches in accordance with Article
48c(8) of Directive 2013/36/EU

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 03/02/2026. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the [Legal notice section](#) of the EBA website.

2. Executive Summary

The draft Guidelines on authorisation of third country branches fulfil the mandate set out in Article 48c(8) of the CRD and lay down:

- a) the list of information to be included in the application for authorisation submitted by the direct head undertaking, i.e. the applicant head undertaking;
- b) the procedure for authorisation, as well as the standard forms and templates for the provision of the information referred to in point (a)
- c) the assessment of the conditions for granting authorisation;
- d) the condition under which competent authorities may rely on information that has already been provided in the process of any prior authorisation third country branch authorisation.

The draft Guidelines are addressed to competent authorities in charge of the receipt and assessment of the applications to grant authorisation as TCBs. In terms of scope they cover those applications for authorisation of TCBs that will be subject to the requirements set out in Title VI of the CRD, and do not apply to those application for authorisation of TCBs that, based on national law, are subject to the same requirements applicable to credit institutions, except for those requirements that do not apply to credit institutions (eg. booking requirements for originated business).

The list of information to be included in the application, covers the information on the programme of operations of the TCB, including the business plan, capital endowment, liquidity requirement, internal governance, booking arrangement and reporting requirements, and the information about the head undertaking, in particular its compliance with prudential requirements. Such information to be obtained also in cooperation with the third country authority is particularly important considering that the TCB has no separate legal entity from the head undertaking and that prudential deficiencies may negative affect the TCB.

The part of the mandate on the conditions for reliance on information submitted by the applicant head undertaking in any other prior authorisation procedure has been 'operationalised' in an exemption from the submission of the information that, based on the criteria specified in the draft Guidelines, is considered to be reliable by the competent authority.

Whilst the authorisation has a territorial scope, the CRD envisages two exceptions of provision of services cross-border: a) intragroup funding arrangements with TCBs belonging to the same head undertaking; b) via reverse solicitation.

With regard to point a), the draft Guidelines specify that the competent authority should verify that planned cross-border intragroup funding arrangements are within the limits of the exception set out in Article 48c(4), point (d) CRD and do not disguise cross-border business activities in breach of the territorial scope of the authorisation. As to point b), the draft Guidelines specify that at authorisation, given that the TCB does not yet exist and cannot be solicited upon the exclusive initiative of clients or counterparties, the financial forecasts contained in the business plan cannot contain forecast about activities to be provided upon reverse solicitation.

As regards the procedural aspects, Part III of the draft Guidelines focuses on the need to balance transparency and flexibility of the process, having regard of the complexity of the procedure that also entails cooperation and exchanges with the third country authority of the head undertaking. Attention is placed on the assessment period, on the transparency of the process, on the possibility of the competent authority to request clarification, including additional information, about the application, and on the cooperation in particular with the third country authority(ies) of the head undertaking(s), and with the AML/CFT supervisor for the assessment of the criterion relating to the compliance with AML/CFT requirements.

Standard letter for the request of information to the third country authority, as well as standard submission letter and template for the submission of the application complete the draft Guidelines.

Next steps

Following public consultation and approval, the guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from [].

3. Background and rationale

3.1. The introduction of a new minimum harmonisation regime applicable to third country branches

Directive 2013/36/EU, the Capital Requirements Directive (CRD)¹, as amended by Directive (EU) 2024/1619, has introduced a new minimum harmonisation regime applicable to EU branches of third country undertakings which intend to provide core banking services in a Member State ('third country branches' or 'TCBs'). Such services are identified in Article 47(1), points (a) and (b) as the services referred to in points 1, 2 and 6 of Annex I to the CRD, namely: (i) taking deposits or other repayable funds, (ii) lending; (iii) guarantees and commitments

According to Article 21c CRD, a TCB needs to be established in the relevant Member State where such services are intended to be provided, unless exemptions or carve outs set out in that provision apply. Namely, a TCB does not need to be established when core banking services are provided by third country undertakings to EU credit institutions, or to members of the same group in the Union, or upon reverse solicitation as set out in Article 21c(2), point (a), in the second subparagraph therein, and in paragraph (3) of the same CRD provision. Additionally, the CRD does not apply to investment services and related ancillary services provided under Annex I, Section A and B of Directive 2014/65 ('MiFID'). Lastly, to facilitate the transition to the new regime, a contract grandfathering is envisaged.

According to Article 47(1) CRD the foreign entities subject to the CRD provision about the establishment of a TCBs are:

- a) head-undertakings in a third country that, were they established in the Union, would meet the definition of credit institution (including investment firms that have been re-authorised as credit institutions) set out in point (4), n. (a) and (b) of Article 4(1) of the CRR, for carrying out the activities listed in n. 2 and 6 of Annex I CRD (i.e. granting loans; providing guarantees or commitments;
- b) any third country undertaking for taking of deposits or other repayable funds (activity n. 1 of Annex I CRD).

The new regime on TCBs will apply from 11 January 2027².

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

² Except for the provisions referred to in Article 2(1), fourth subparagraph, of the CRD which will become applicable on 11 July 2026. ("Member states shall apply [...] the measures necessary to comply with the amendments set out in Article 1, point (13), of this Directive as regards Articles 48k and 48l of Directive 2013/36/EU from 11 January 2026, and with the amendments set out in Article 1, point (9), of this Directive as regards Article 21c(5) of Directive 2013/36/EU from 11 July 2026").

3.2. Overview of the new minimum harmonisation regime applicable to TCBs

The newly introduced regime covers authorisation, prudential requirements - such as internal governance, capital endowment, liquidity, booking arrangements and reporting - as well as supervisory practices.

To embed proportionality, TCBs are categorised in two classes. Class 1, with higher risk profile, covers TCBs in the following circumstances:

- a. have total assets booked or originated equal or greater than 5 billion EUR;
- b. collect deposits or other repayable funds from retail customers for an amount equal to or greater than 5 % of the total liabilities of the third-country branch or exceeding EUR 50 million;
- c. the head undertaking of the third country branch is established in a country that is listed as high-risk from a AML/CFT perspective;
- d. the third country where the head undertaking is established is non-equivalent from a prudential regulatory, supervisory or confidentiality perspective.

When none of the referred conditions are met, the TCB falls in class 2. The regime applicable to class 1 and class 2 TCBs differs in respect of internal governance requirements (in particular the possibility for competent authorities to require class 1 TCBs to have a local management committee), the amount of the capital endowment, liquidity and reporting requirements and supervisory practices.

Furthermore, the new framework empowers Member States to request TCBs to apply for authorisation under Title III, Chapter 1 of CRD where:

- a. a TCB has provided or is providing core banking services to clients or counterparties in other Member States in breach of the territorial scope of the authorisation (save where exceptions apply);
- b. a TCB meets the indicators of systemic importance and poses a significant risk to the financial stability in the Union or in the host Member State; or
- c. the total aggregate amount of assets of all TCBs from the same TCG are equal or greater than Eur 40 billion, or the assets booked in the TCB exceed Eur 10 billion.

The exercise of such power by the competent authority in points b and c above, entails a prior systemic importance assessment and, where the Eur 40 billion threshold is reached, the consultation of the competent authorities supervising subsidiaries or TCBs of the same TCG and of the EBA.

The new framework is of minimum harmonisation and needs to be complied with by any TCB regardless of the national applicable legislation. However, it does not affect the possibility of Member States to apply to TCBs the same requirements applicable to credit institutions, i.e. to treat TCBs like subsidiaries of the head undertaking ('subsidiary-like approach'). Also, existing

TCBs have to comply with new minimum requirements from 11 January 2027, the date of application of the new TCB regime.

3.3. Overview of the new minimum authorisation regime of TCBs

The authorisation has a territorial scope and TCBs may only carry out the core banking services within the MS where authorisation has been granted. Given that TCBs are not entitled to passporting rights, the breach of the territorial scope of the authorisation is a ground to trigger the subsidiarisation procedure as per Article 48i of CRD.

Exceptions to the territorial scope of the authorisation are: a) intragroup funding transactions concluded with other TCBs (i.e. not subsidiaries) of the same head undertaking; b) transactions entered into on the basis of reverse solicitation (within the meaning Article 21c(2) point (a), 21c(2), second and third sub-paragraphs, and 21c(3) of CRD). Whilst the concept of reverse solicitation is new to the banking sector, it has made its way in the capital market sector. This exception captures the activities provided upon the exclusive initiative of the client or of the counterparty situated in another Member State, and is the same concept that applies to the provision of core banking services directly from third countries upon exclusive solicitation by EU clients or counterparties.

The wording of the relevant provisions on reverse solicitation in Article 21c CRD is in line with Article 42 of MiFID and Article 61 Regulation (EU) 2023/1114 on Markets in Crypto Assets Regulation (MiCAR). ESMA has issued interpretative guidance on the referred provisions, which can be taken into account by market operators and competent authorities as a reference. Notably, ESMA has issued: a) [ESMA MiFID II Q&A \(2023\)](#), including on Article 42 of MiFID; b) Public Statement on Reminder to firms of the MiFID II rules on ‘reverse solicitation’ in the context of the recent end of the UK transition period³; c) Guidelines on reverse solicitation under MiCAR⁴.

To ensure effective supervision of TCBs, cooperation with third country home authority is underscored by the CRD. Having MoUs in place with third country authorities supports a smooth flow of information and cooperation. CAs should therefore endeavour to conclude a MoU with the third country authority of the head undertaking before granting the authorisation. However, to avoid precluding access to the EU market pending the negotiations of the MoU, other arrangements, such as exchange of letters, may be in place, to the satisfaction of the CA concerned, to ensure that the CA “can exercise their supervisory functions”.

In accordance with the minimum harmonisation approach towards TCBs, the CRD lays down the minimum requirements for granting authorisation (Article 48c(4)) and the minimum grounds for refusal or withdrawal of the authorisation (Article 48d).

The conditions for granting authorisation are set out in paragraph (4) of Article 48c CRD, namely:

³ [esma35-43-2509 statement on reverse solicitation.pdf](#)

⁴ [ESMA35-1872330276-1899 Final Report on the guidelines on reverse solicitation under the Markets in Crypto Assets Regulation \(MiCA\)](#)

- a) meeting the prudential requirements applicable to TCBs set out in Sub-Section 2 of Title VI of CRD;
- b) the activities that the TCBs intends to carry out in the Member State are covered by the authorisation held by the head undertaking in the third country and are subject to supervision in that third country
- c) the supervisory authority of the head undertaking in the third country has been notified of and provided with the application to establish a branch in the Member State and the accompanying documents;
- d) the authorisation provides that the TCB 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 activities in other Member States on a cross-border basis, except for intragroup funding transactions concluded with other third-country branches of the same head undertaking within the meaning of Article 47(3), point (2) CRD and for transactions entered into on the basis of reverse solicitation of services in accordance with Article 21c;
- e) for the purpose of exercising its supervisory functions, the competent authority is able to access all the necessary information on the head undertaking from the supervisory authorities of that head undertaking and to effectively coordinate its supervisory activities with those of the third-country's supervisory authorities, in particular in periods of crisis or financial distress affecting the head undertaking, its group or the third country's financial system;
- f) there are no reasonable grounds to suspect that the TCB would be used to commit or facilitate the commission of money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849.

To assess whether this condition is met, the CRD provides that competent authority has to consult the authority responsible for the supervision of anti-money laundering or counter-terrorist financing in the Member State, in accordance with Directive (EU) 2015/849 ('AMLD') and obtain written confirmation that the condition is fulfilled before proceeding to authorising the third-country branch.

The minimum grounds for refusal of authorisation are:

- (a) the TCB does not meet the requirements for authorisation laid down in Article 48c or in national law;
- (b) the head undertaking or its group does not meet the prudential requirements that apply to it under the third-country law or there are reasonable grounds to suspect that it does not meet or that it will breach those requirements within the following 12 months.

The EBA has been mandated by Article 48c(8) of CRD to develop Guidelines to further specify:

- (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 organisational structure and the risk management referred to in paragraph 3;
- (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 4;
- (d) the conditions under which competent authorities may rely on information that has already been provided in the process of any prior third-country branch authorisation”.

The Guidelines have to be issued by 10 July 2026.

To develop the Guidelines, the EBA has leveraged on previous EBA licensing regulatory products and national regulations and adapted them to the specificities of TCBs, in particular the RTS on information to be submitted for the authorisation of credit institutions⁵ and the Guidelines on a common assessment methodology for the authorisation of credit institutions⁶. These Guidelines also pursue consistency with other regulatory products that are being developed in parallel for TCBs such as draft Guidelines on the instruments meeting requirements for the capital endowment⁷, draft RTS on booking arrangements⁸, draft ITS on minimum common reporting requirements⁹, draft revised Guidelines on internal governance¹⁰, Guidelines on cooperation between competent authorities and AML/CFT supervisors and FIUs¹¹.

3.3.1. Scope of the mandate

The draft Guidelines apply to the application for authorisation to establish a TCB that, based on the national applicable law will be subject to the prudential and supervisory requirements set out in Sub-Section 2 of Title VI and CRD and do not apply to those TCBs that Member States subject to the application of the same requirements applicable to credit institutions in accordance with

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2580>

⁶ https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2021/EBA-gl-2021-12%20Guidelines%20on%20the%20authorisation%20of%20credit%20institutions/1023885/Report%20GL%20on%20a%20common%20assessment%20methodology%20%28002%29%20-%20clean.pdf

⁷ <https://www.eba.europa.eu/sites/default/files/2025-07/62a91335-309c-4e44-9275-043f49c003b7/Consultation%20paper%20on%20draft%20Guidelines%20on%20TCB%20capital%20endowment%20requirement.pdf>

⁸ <https://www.eba.europa.eu/sites/default/files/2025-07/657bde83-a7f9-44f8-9c88-a2b9647eaa7c/Consultation%20Paper%20on%20draft%20RTS%20on%20TCB%20booking%20arrangements.pdf>

⁹ <https://www.eba.europa.eu/sites/default/files/2025-07/43c84339-4320-4a3f-bd17-7e30ccfd7ca0/Consultation%20Paper%20ITS%20on%20Third-Country%20Branches%20Reporting.pdf>

¹⁰ <https://www.eba.europa.eu/sites/default/files/2025-08/654f1ca6-0cad-4a2a-b85c-dd2abfae5fe6/Consultation%20Paper%20on%20draft%20amended%20Guidelines%20on%20internal%20governance.pdf>

¹¹ https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-15%20GL%20on%20CFT%20cooperation/1025384/Final%20AML-CFT%20Cooperation%20Guidelines.pdf

Article 48a(4)¹² CRD. This notwithstanding, taking into account that some prudential requirements set out in Title VI are TCB specific and are not envisaged for credit institutions, eg. booking arrangement for originated business, the parts of the draft Guidelines covering such specific requirements are also applicable to applications for authorisation for TCBs subject to the subsidiary-like approach.

The draft Guidelines are addressed to the competent authority in charge of granting the authorisation in the Member State where the TCB intends to perform its activities where, therefore, the application has been submitted.

The draft Guidelines are indirectly addressed to the head undertaking established in the third country submitting the application, i.e. the 'applicant head undertaking'. Considering that the TCB has no separate legal personality from the head undertaking and the impact of the compliance with prudential requirements at group/consolidated level to ensure the sound and prudent management of the TCBs, some information and documents to be included in the application also apply to the ultimate and intermediary head undertaking in accordance with the definition laid down in Article 47(3), point (2) CRD¹³.

TCBs have to be granted authorisation by the competent authority of the Member State where they intend to provide core banking services, however TCBs may carry out other activities set out in national law. The draft Guidelines, therefore, take into account such other activities, eg. as regards the scope of the authorisation, the forecast calculation of the capital endowment, of the liquidity requirements and the envisaged internal governance arrangements.

To fulfil the whole articulation of the mandate, the draft Guidelines are structured as follows:

- Part I: lays down the list of information to be included in the application for authorisation to establish a TCB under CRD and related exemptions;
- Part II: contains the assessment methodology
- Part III: covers the procedural elements
- Annexes: contain standard submission letter and templates for the submission of the information included in the application for authorisation

¹² The provision reads: "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 of that treatment. Paragraphs 1, 2 and 3 of this Article shall not apply to those third-country branches, except for the purposes of Article 48p".

¹³ "head undertaking" means an undertaking which has its head office in a third country and which has established a third-country branch in the Member State, and the intermediate or ultimate parent undertakings of that undertaking, as applicable".

3.3.2. Content of the application and assessment methodology

a) Information on the head undertaking

Part I of the draft Guidelines covers the information and documents to be included in the application relating to: a) the head undertaking and its group, b) the programme of operation, including the business plan, the capital endowment, liquidity requirement, internal governance arrangements and risk management, booking arrangements and reporting requirements.

With regard to the head undertaking and its group, the submission of some information focusing on the head undertaking, notably the compliance with prudential requirements and the good standing from a AML/CFT perspective of the head undertaking(s) and the members of its management body, requires the cooperation of the third country authority(ies). The request of such information is necessary having regard that the TCB has no separate legal personality from the applicant head undertaking, that the conditions to grant authorisation envisage the compliance with prudential requirements by the envisaged TCB and that one of the ground for refusal of authorisation is that “the head undertaking or its group does not meet the prudential requirements that apply to it under the third-country law or there are reasonable grounds to suspect that it does not meet or that it will breach those requirements within the following 12 months” (Article 48d(1), point (b) CRD).

Therefore, the application has to include the certificate of non-opposition issued by the third country authority(ies) about the establishment of the TCB. Such certificate has to be included in the application or, depending on the practice in use with the third country authority(ies), may be obtained via bilateral cooperation by the competent authority to which the application has to be submitted, as specified in Part III of the draft Guidelines on the procedural aspects. For both cases the draft Guidelines clarify the prudential requirements that have to be considered by the third country authority to provide the non-opposition certificate. In so doing, the draft Guidelines aim to harmonise the perimeter of the assessment by the third country authority irrespective of where the TCB will be established. Considering the relevance of compliance with prudential requirements at consolidated level and that in some third countries prudential requirements are only established at consolidated level, the non-opposition certificate is requested on a consolidated basis (to the intermediate and parent head undertaking), and where applicable, also at individual level of the applicant head undertaking.

The prudential requirements to be considered by the third country authority(ies) for purposes of the non-opposition certificate referred to are those included in the template of the draft ITS on reporting requirements for TCBs, to be reported by the TCB in going concern about the head undertaking. In so doing the draft Guidelines also aim at an internal consistency of the framework applicable to TCBs.

The draft Guidelines take a pragmatic approach in respect of the requirement that the activities for which the TCB submits the application for authorisation are covered by the authorisation of the head undertaking in the third country. They acknowledge that in some third countries, the activity of granting credit or the provision of guarantees or commitments are not covered by

authorisation, however where such activities are performed by credit institutions, they are subject to prudential regulation and supervision. To cater for these situations, the draft Guidelines require that the application has to specify that such activities are carried out in the ordinary course of business by the applicant head undertaking, and confirm that it is subject to prudential regulation and supervision.

Furthermore, to ensure the smooth supervision of the TCB, the applicant head undertaking has to submit a legal opinion stating that there is no obstacle for the applicant head undertaking to comply with EU and national law, in as much as applicable, in relation to the TCB.

In respect of the part of the mandate relating on the “conditions under which competent authorities may rely on information that has already been provided in the process of any prior third-country branch authorisation”, Part I of the draft Guidelines identifies such information as that relating to the head undertaking (Sections I and II of Part I), and lays down the criteria to establish the reliability of the information. Where such conditions are met, the draft Guidelines ‘operationalise’ such reliance by providing an exemption from the submission to the competent authority of such information.

b) Programme of operations

The information on the programme of operations covers the business plan, to be submitted in a baseline and in a stress scenario basis for a three-year time horizon. It has to cover all the activities envisaged to be carried out by the TCB, i.e. the core banking services, the activities authorised under national law and those that are not subject to regulation.

The business plan has to include financial forecasts and prudential forecasts about the capital endowment and the liquidity requirement. Considering that at the moment of authorisation the TCB does not yet exist and clients are not in the position to solicit any service, the financial forecasts cannot include planned activity to be provided via reverse solicitation in accordance with Article 48c(4), point (d), of CRD.

The information on the capital endowment has to ensure compliance with that requirement, as specified in the draft EBA Guidelines on the instruments meeting requirements for the capital endowment. The instruments have to be deposited on the escrow account in accordance with Article 48e(3) before the authorisation becomes effective in accordance with national law at the latest.

As regards internal governance arrangements, the draft Guidelines focus on the at least two persons that will manage the TCB and their suitability, as well as on the organisational structure of the TCB and the links to the head undertaking. Emphasis is placed on the importance that TCBs are not mere empty shells and are not used solely and systematically to originate assets and liabilities which will then be booked in the head undertaking or other EU legal entities of the same third country group. Instead, TCBs are required to record all the assets and liabilities booked or originated by the TCBs in the Member State and to manage those assets and liabilities

autonomously within the TCBs. To ensure internal consistency, references to the revised draft [EBA Guidelines on internal governance](#)¹⁴ are included in the text.

A specific section is dedicated to AML/CFT aspects, focusing on policy and procedures to ensure compliance with applicable requirements. The need for the competent authority in charge of the assessment of the application to consult with the AML/CFT supervisor is also emphasised.

3.3.3. Procedural aspects

Part III on the procedural aspects of the application process aims to balance the need for transparency to the applicant with that of flexibility, taking also into account the cross-border aspects and the need for bilateral coordination with the third country competent authority of the applicant head undertaking.

For this purpose, the draft Guidelines include a deadline within which the assessment of the application has to be concluded, reference to the importance of keeping the applicant informed of the phases where the application stands, the possibility of the competent authority to request clarification about the application, including additional information. Specific attention is dedicated to the cooperation with the third country authority, the AML/CFT supervisor and any other competent authority or authority that may be involved in the process.

3.3.4. Standard forms and template

To facilitate the implementation of supervisory practices, and in fulfilment of point (d) of the mandate set out in Article 48c(8) CRD, the Annexes contain: a) a standard letter for the request of the non-opposition statement to the third country competent authority; b) standard letter for the submission of the application; c) template for the submission of the information included in the application.

¹⁴ Guidelines on internal governance under Directive 2013/36/EU

4. Guidelines

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Draft Guidelines

On the authorisation of third country
branches (TCBs) in accordance with
Article 48c(8) of Directive
2013/36/EU

1. Compliance and reporting obligations

Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹⁵. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

Notifications will be published on the EBA website, in line with Article 16(3).

¹⁵ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

Subject matter, scope and definitions

Subject matter

These Guidelines further specify the information to be provided to the competent authorities upon application for authorisation of a third-country branch (TCB) including with regard to its programme of operations, organisational structure and risk management, as well as the standard forms and templates for the provision of that information, the procedure and the conditions for such authorisation, and the conditions under which competent authorities may rely on information that has already been provided in the process of any prior third country branch authorisation, in accordance with the mandate set out in Article 48c(8) of Directive 2013/36/EU.

Scope of application

These guidelines apply to the authorisation of all TCBs.

Where Article 48a (4) of Directive 2013/36/EU applies, these guidelines apply only with regard to requirements of TCBs set out in Title VI of Directive 2013/36/EU that are not envisaged for credit institutions authorised under that Directive.

Addressees

These guidelines are addressed to the head undertakings and to the competent authorities as defined in Article 4, point (2)(i) of Regulation (EU) No 1093/2010.

Definitions

Unless otherwise specified, terms used and defined in Directive 2013/36/EU and in Regulation (EU) N. 575/2013 have the same meaning in these Guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Applicant head undertaking	means the direct head undertaking within the meaning of Article 47(3), point (2) of CRD, that submits the application for authorisation to establish a TCB under these GLs
Head undertaking	means an undertaking which has its head office in a third country and which has established a third-country branch in the Member State, and the intermediate or ultimate parent undertakings of that undertaking, as applicable. (Article 47(3), point (2) of CRD)
LCR	means “Liquidity Coverage Ratio” as set out in Article 4 of Commission Delegated Regulation (EU) 2015/61
NSFR	means “Net Stable Funding Ratio” as set out in Article 428b of Regulation (EU) No 575/2013

TCB	means “third country branch” within the meaning of Article 47(3), point (1) of CRD
TCG	means “third country group” as defined in point 64 of Article 3(1) of CRD

5. Implementation

Date of application

These guidelines apply from 11 January 2027.

Part I: List of information for authorisation of third country branches under CRD

1. Information about the identity of the applicant head undertaking and its group

1. The application for authorisation to establish a TCB should include the following information on the applicant head undertaking, the intermediate and the ultimate parent head undertaking as applicable:
 - a) legal name, legal form, date and place of incorporation, website or other communication channels of the head undertakings and contact details of the person within the applicant head undertaking to contact regarding the application. Where relevant and available, the name and contact details of the principal professional adviser, if any, used to prepare the application;
 - b) country and address of the registered office of the applicant head undertaking, the intermediate and the ultimate parent head undertaking and, where different, the country and address of its administrative headquarters;
 - c) where applicable, name of the public register where the head undertaking is registered and related registration number and, where available, its Legal Entity Identifier (LEI);
 - d) confirmation that the activities that the applicant head undertaking seeks authorisation for in the Member State are covered by the authorisation that such applicant head undertaking holds in the third country where it is established and is subject to supervision. Where relevant, explanation on the correspondence between the activities authorised in the third country and the activities listed in Annex I of CRD. Where lending or the provision of guarantees and commitment that the applicant head undertaking intends to provide in the Member State via the TCB is not subject to authorisation in the third country, the applicant head undertaking should clarify in the application that the core banking service is part of its ordinary course of business, and that is subject to prudential regulation and supervision (in particular all the risks linked to such core banking services are captured by the risk management framework and are reflected in the capital ratios and requirements);
 - e) name, organisational unit, and contact details of the relevant contact persons within the third country competent authority(ies) in charge of the supervision of the applicant head-undertaking and of the intermediate and ultimate head-undertaking, or for the supervision of the relevant activities, if different;
 - f) confirmation that the application for authorisation to establish a TCB in the Member State and related documentation as per Article 48c(4), point (c) of the CRD has been notified to the third country competent authority of the applicant head undertaking.
2. The application for authorisation should contain the following information on the head undertaking and its group:

- a) corporate chart of the group of the applicant head undertaking, showing, among others, the intermediary and ultimate parent head undertaking, as per Article 47(3), point (2) CRD and the geographic areas of establishment and of activity of the entities which are part of the TCG;
- b) indication of any ongoing or foreseen corporate material operations within the TCG (e.g. mergers or acquisitions, establishment of new subsidiaries and/or other third country branches) which may significantly impact the prudential situation and the organisational structure of the applicant head undertaking;
- c) identity of the members of the management body in management function of (i) the applicant head undertaking, including the member(s) who is the ultimate reporting line about the TCB, and (ii) the intermediate and ultimate parent undertaking, where applicable;
- d) chart of the capital structure of the ultimate parent head undertaking with identification of direct controlling shareholders and of the ultimate beneficial owner(s). Where the TCG has one or more subsidiaries or TCBs in the EU which are financial sector entities, information on the Member State where they are authorised and name of the relevant authority or, where the application for authorisation is pending, indication of the competent authority handling such application and the relevant contact persons within that competent authority;
- e) audited financial statements of the last three years of the head undertaking on a solo and where applicable on a consolidated basis, including a summary note describing the operations of the head undertaking or its group;
- f) where the programme of operations envisages the taking of deposits by the TCB, commitment of the applicant head undertaking to make the TCB to become member of the deposit guarantee scheme of the Member State where the application is submitted¹⁶.
- g) statement from the third country competent authority or authorities of the applicant head undertaking, and where applicable, the intermediary and ultimate parent head undertaking within the meaning of Article 47(2), point (b) CRD, that there are no grounds of opposition to the establishment of the TCB. Such statement(s) should cover the good standing of all the relevant head undertakings in respect of the compliance by such head undertaking(s) on an individual and on a consolidated basis as applicable under third country law, with the prudential requirements provided in third country law and regulation (notably, own funds, own funds requirements, LCR, NSFR, leverage ratio requirement), and the adequacy of the organisational, administrative and accounting structures.

The non-opposition statement should also cover the good reputation of all the relevant head undertakings and the members of their respective management bodies in management function, as well as the controlling shareholders and the ultimate beneficial owners. The non-opposition statement by the third country competent authority or authorities should consider any breach of law or regulation that are relevant for the prudential framework of the relevant third country, such as violation of prudential regulations, insolvency,

¹⁶ Draft based on Article 15 of Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/49/EU as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency. The text shall be revised following the adoption of the referred Proposal.

- commercial crimes, money laundering and terrorist financing, occurred in the past ten years or other shorter period as applicable under third country prudential law, including under pending procedure or investigation. Where relevant, the non-opposition statement should specify information about criminal, financial law, money laundering, insolvency or commercial law convictions which have not been set aside, pending criminal investigations, procedures or similar proceedings or investigations.
- h) Where directly provided to the applicant by the third country competent authority, such non-opposition statement should be included in the application. Alternatively, the competent authority should consult the third country competent authority in accordance with Part III of these Guidelines.
 - i) A reasoned, third party legal opinion on the absence of impediments in the third country's framework applicable to the applicant, intermediate and ultimate parent head undertaking, where applicable, precluding the ability of the TCB to comply with the EU and prudential legislation and regulation.
3. The application should indicate whether, based on the criteria set out in Article 48a(1) and (2) of CRD, including the conditions to be a qualifying TCB as per Article 48b(1) CRD, the envisaged TCB will classify as category 1 or category 2 TCB. To that end, the application should contain all the information necessary to enable the competent authority to review and assess the classification of the envisaged TCB.

Consultation question n. 1

Do you have any comment on the coverage of the statement of non-opposition to be issued by the third country competent authority?

2. Programme of operations of the TCB: business plan

4. The application should contain a business plan for the three year following access to the market of the TCB upon grant of the authorisation, accompanied by an explanation of its initial viability and ongoing sustainability on a base case and a stress scenario basis for the same period. The underlying assumptions should be credible and realistic, and should rely on official macroeconomic forecasts elaborated by a Union or public national institution. The business plan of the TCB should include the following qualitative and quantitative information:
- a) intended location of establishment and address of the TCB;
 - b) the applicant head undertaking's business rationale and business strategy for the establishment of the TCB and the consistency with its business plan;
 - c) list of the planned activities including a description of the core banking services, of any other financial service requiring a license under national law and non-financial activities that the TCB intends to carry out, and the related risks, as well as the target customers;
 - d) as part of the business plan, financial projections including forecast accounting plans, forecast annual reports, forecast financial statements (namely the balance sheet, the profit and loss accounts or income statements and, where available, the cash flow statements);
 - e) forecast calculation of any prudential requirement imposed by national law;
 - f) estimate date of commencement of the TCB business activities.

Consultation question n. 2

Do you have any comment on the information requested on the programme of operations?

3. Programme of operations: internal governance and risk management of the TCB

5. In relation to the internal governance and internal controls of the TCB, the application should include the following information:
- a) a chart of the planned TCB organisational structure accompanied by relevant explanations;
 - b) the identity of each of the at least two persons who will effectively direct the TCB and, where applicable, of each member of the local management committee and the information for the related suitability assessment as set out in the EBA RTS on information and documentation to carry out the suitability assessment of the members of the management body under article 91 of CRD¹⁷ and in the *Joint EBA and ESMA Guidelines on the suitability assessment of suitability of the members of the management body*¹⁸, that apply *mutatis mutandis*;
The application should also contain the results of the applicant's head undertaking most recent internal suitability assessment of the at least two persons effectively directing the TCB and, where applicable, of the members of the local management committee;
 - c) where available, the internal suitability assessment of the key function holders of the envisaged TCB and, where applicable in accordance with national law, the supporting information for the competent authority's suitability assessment;
 - d) description of the allocation of duties between the at least two persons effectively directing the TCB and, where applicable, among the members of the local management committee;
 - e) policies and procedures governing the internal control functions, i.e. risk management, compliance and internal audit;
 - f) description of the reporting lines between the internal control functions and the persons effectively directing the TCB's business and, where applicable, the local management committee as well as to the management body of the head undertaking.
 - g) where applicable, copy of the rules of procedure for the local management committee;
 - h) outline of the TCB's credit risk policy and, where applicable rules of procedure of the credit risk committee;
 - i) outline of the TCB's remuneration policy;
 - j) description of the ICT strategy, including ICT risk management framework compliant with Regulation (EU) 2022/2554 on digital operational resilience for the financial sector ("DORA");
 - k) description of the third-party arrangements regarding the provision or the support of critical or important functions;

¹⁷ Consultation paper on the RTS on documentation to be submitted to competent authority for suitability assessment of members of the management body and key function holders of large institutions under Article 91(10) of Directive 2013/36/EU available at [www](http://www.eba.europa.eu)

¹⁸ 2021 Joint ESMA and EBA Guidelines, available at <https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/internal-governance/joint-esma-and-eba-guidelines>

- l) details of internal arrangements under which critical or important functions of the TCB are performed by its head undertaking;
- m) outline of the business continuity plan, and information as to the coverage of the TCB by the recovery plan of the applicant head undertaking.

4. Programme of operations: information on AML/CFT requirements

6. In order to determine whether there are reasonable grounds to suspect that the TCB would be used to commit or facilitate the commission of ML/TF, the application should include the following:
 - a) identity of the person responsible for the TCB's compliance with AML/CFT requirements in the Member State in which it seeks authorisation;
 - b) the business-wide ML/TF risk assessment of the TCB, having regard to the inherent risk factors relating to the nature and characteristics of its target customer bases, the products and services offered and distribution channels used;
 - c) description of the TCB's governance arrangements and resources dedicated to its AML/CFT compliance function and the applicant's assessment of the adequacy of those arrangements and resources in light of the inherent ML/TF risks which the TCB will be exposed to;
 - d) description of the envisaged AML/CFT related internal systems and controls and how they respond to the ML/TF risks identified in the ML/TF risk assessment, referred above;
 - e) description of the origin of the resources that constitute the capital endowment, and the channel used for the transfer of the instruments that will be part of the capital endowment.

5. Capital endowment

7. The application should contain information on the capital endowment requirement, including the following:
 - a) forecast determination of the capital endowment requirement relying on the financial forecasts included in the business plan, based on the envisaged class of the TCB, in accordance with Article 48e CRD;
 - b) list of the envisaged instruments that will compose the capital endowment at the time of the submission of the application for authorisation and a statement that they meet the conditions laid down in the draft EBA Guidelines on the instruments meeting requirements for the capital endowment¹⁹;
 - c) copy of the contract of the escrow account with an institution established in the Member State where the authorisation for the TCB is sought, that is not part of its head undertaking's group, or where permitted under national law, with the central bank of that Member State;
 - d) evidence that the capital endowment is deposited in an escrow account, or if it has not yet been deposited in full at the time of the submission of the application for authorisation, indication of the timeline for such deposit before the authorisation to commence the activity as a TCB is effective in accordance with national law;

¹⁹ Consultation paper available here: [Guidelines on third country branches capital endowment requirement | European Banking Authority](#)

- e) description of arrangements, strategies, processes and mechanisms to meet the capital endowment requirement on a continuous basis.

6. Liquidity requirements

8. The application should include the following information in relation to the liquidity requirements:
 - a) forecast determination of the liquidity requirement relying on the financial forecasts included in the business plan;
 - b) the funding strategy and liquidity planning;
 - c) description of the envisaged funding sources of the TCB, including of any intragroup funding arrangements within the limits of the exception set out in Article 48c, point (d) CRD.
 - d) confirmation that the liquid assets destined to meet the liquidity requirements are unencumbered and that the assets fulfilling the liquidity requirement are not counted towards the capital endowment requirement.
 - e) evidence that the liquid assets are deposited in an account in accordance with Article 48f CRD or, where the liquid assets have not yet been deposited in part or in total at the time of the submission of the application, indication of the timeline to deposit such liquid assets before the authorisation to commence the activity as a third country branch is effective in accordance with national law.
 - f) description of the liquidity governance arrangements demonstrating the capacity to manage the liquidity in the base case and the preparedness and ability to withstand stress situations, including: the ability to compute the applicable liquidity requirements in accordance with Art. 48f(1) and (2) CRD, as well as an outline of the liquidity internal controls framework.

7. Programme of operations: information on the booking arrangements

9. In relation to the booking requirements of the TCB, the information to be provided for the authorisation should include:
 - a) the relevant policies with a description of the processes and procedures established to maintain the registry book and record all the assets and liabilities booked or originated by the TCB, as well as off balance sheet items, as referred in Article 48h(1) of CRD;
 - b) the policy on booking arrangements for the management of the registry book referred in Article 48h(2) of CRD. The policy should provide a clear rationale for the booking arrangements, including planned intragroup funding transactions, hedging arrangements or other transfers of risks, and set out how those arrangements align with the TCB's business and risk management strategy;
 - c) evidence of the approval of the policy on booking arrangements by the governing body of the head undertaking.

8. Exemption from the submission of information

10. Where the applicant head undertaking has submitted an application for authorisation for the establishment of a TCB to a competent authority of a Member State, that applicant may be exempted from submitting the information and documents listed in Part I, Section 1 on the

applicant, the intermediary and the ultimate parent head undertaking and its group, provided the indicated information is reliable and the circumstances below are met:

- a) the applicant head undertaking, or the intermediary or the ultimate head undertaking respectively, submits a declaration that the indicated relevant information listed in Part I, Sections 1 has not materially changed since the previous application and it is still true, accurate and up-to-date;
 - b) the information is in the language of the Member State where the current application for authorisation has been submitted or in English;
 - c) the information will be in the possession of the competent authority following its formal request to the competent authority of the other Member State and the transmission by the latter, with indication of the authorisation procedure where the applicant head undertaking has submitted the relevant information and whether it is pending or has been concluded;
 - d) the exchange of information complies with applicable data protection requirements.
11. The reliance on information obtained from other competent authorities should not affect the power of the competent authority to request clarifications, including additional information, to the applicant head undertaking, the intermediary or the ultimate parent head undertaking respectively.

Consultation question n. 3

Do you have any comment on the circumstances to be met to consider reliable the information provided in any prior authorisation procedure to establish a TCB?

Part II: Assessment methodology

1. General principles

12. Competent authorities should review the information and documents submitted with the application pursuant to Part I of these draft Guidelines, having regard that they should be true, accurate complete and up to date.
13. Competent authorities should review the application also in order to assess the indicated classification of the TCB, whether it will fall in category 1 or 2, based on the criteria set out in Article 48a(1) and (2) CRD. Such evaluation, together with the business model and organisational structure of the envisaged TCB will also impact on the calibration of the intensity of the assessment of the application.
14. The authorisation can only be granted when the competent authority, having reviewed and assessed all the information and documents submitted with the application and any other relevant information including the information obtained from other competent authorities or authorities, deems that the envisaged TCB meets all the conditions for authorisation set out Article 48c(4) of the CRD as specified in these Guidelines.

2. Review of the information and documents on the applicant head undertaking and its group

15. Competent authorities should review the information and documents relating to the applicant head undertaking with a view to checking whether the third country competent authority(ies) has been properly informed of the plan to set up a TCB in the Member State and whether it has expressed any reservation.
16. For this purpose, competent authorities should take the necessary steps to gain a full understating of the statement of non-opposition by the third country competent authority submitted in the application, or to obtain a statement of non-opposition to the establishment of the TCB directly from the third country competent authority as laid down in Part III. Competent authorities remain free to come to a different conclusion than the declaration of the third country competent authority, also taking into account the overall assessment of the application.
17. Competent authorities should be able to access all the necessary information on the applicant, intermediate and ultimate head undertaking from the supervisory authorities of that head undertaking and to effectively coordinate its supervisory activities with those of the third country supervisory authorities.

In order to assess that the applicant, intermediate and ultimate parent head undertaking , as applicable, does not incur in any of the circumstance set out in Article 48d(1), point (b) of CRD, competent authorities should in particular satisfy themselves that, based on the review of the application:

- (a) the head undertakings shall be capable to finance the operations of the TCB and maintain a sound financial structure.

- (b) there is no reasonable ground to conclude that the head undertaking is likely to face financial difficulties and breach the applicable prudential requirements within the following 12 months.

18. Competent authorities should satisfy themselves that there is no legal impediment for the TCB to comply with EU and national legislation, based on the legal opinion submitted as part of the application.

3. Assessment of the programme of operations

19. Competent authorities should carry out a qualitative review of the business plan, in order to gain an overview of all the activities that the envisaged TCB will carry out, notably the core banking services as per Article 47(1) CRD, the activities covered by national law and those that do need to be authorised.
20. Competent authorities should verify that the envisaged activities are only targeted to clients within the Member State where the application for authorisation has been submitted and that the business strategy does not envisage cross-border activities. Any interaction between the planned activities of the envisaged TCB with other TCBs, subsidiaries or branches of the same TCG established in the EU should also be identified.
21. Competent authorities should identify the non-core and core business lines, the typology of target customers, the business and the financial rationale for the planned activities, also having regard to the overall strategy of the applicant head undertaking and of the third country group. Attention should be paid to the quantitative and qualitative objectives of the business plan, including the envisaged TCB services or products, the value proposition and market-positioning. For this purpose, competent authorities should take into account relevant external and internal factors and the plausibility of the underlying quantitative assumptions, as well as the strengths and weaknesses of the business strategy, and any competitive advantage of the TCB.
22. With regard to key external factors and the business environment, competent authorities should gain an adequate understanding of the target customers and of the target market segment, having regard to the activities of the main existing players and prospective competitors. In respect of the target market segment, competent authorities should consider available market trends that may impact the performance and profitability of the envisaged TCB, for instance regulatory, macroprudential, technological, social or demographic trends.
23. With regard to the key internal factors, competent authorities should understand success drivers and key dependencies, by analysing, in particular the strengths in the relationship with customers, suppliers and partners, operational and resource capacity, as well as factors such as third-party providers, intermediaries and regulatory drivers.
24. Competent authorities should review the financial forecasts to assess whether they match the business strategy laid out in the business plan. Without prejudice to the possibility for TCBs to provide activities upon reverse solicitation as per Article 48c(4), point (d), of CRD, competent authorities should verify that the financial forecasts do not rely on cross-border activities that are envisaged to be provided upon reverse solicitation.
25. The competent authority should also review whether there is a clear plan towards implementation and execution of the business plan, assessing the professional capability of the local management and the adequacy of human and operational resources to implement the business strategy.

26. To assess the financial forecasts, competent authorities should at least:

- a) perform a quantitative review of the business plan both on the base case and the stress scenario basis with a view to assessing the envisaged TCB's ability to achieve the projected results in compliance with the prudential requirements in both scenarios;
- b) review the explanation for the initial viability and sustainability of the business model over the business plan three year time horizon;
- c) in respect of the stress scenario, verify in particular that: (i) the economic and business assumptions are severe but plausible; (ii) the identified management measures are adequate;
- d) assess the financial forecasts reflecting the targeted business strategy with respect to the activities, business and product lines based on profit contribution and examine the credibility of the underlying quantitative assumptions (e.g. growth rate, revenue, costs, risks, number of customers, staff costs, macroeconomic assumptions etc.);
- e) identify the key drivers and dependencies of the business performance, including dependencies from the group, such as allocation of businesses, transfer pricing, cost absorptions and potential vulnerabilities;
- f) review the product pricing and structure, and give consideration, for instance, to the reliance on risky or concentrated or volatile sources of income;
- g) understand the various revenue sources (e.g. interest-income-based or fee-income-based), specific revenue drivers, key performance indicators and the level of risk of the related business lines;
- h) where possible and appropriate, determine a relevant peer comparison based on rival product/business lines targeting the same source of profits/customers and base the analysis on supervisory, market and macroeconomic data in possession of competent authorities;
- i) where relevant, consider assessing profitability trends and ratios, having regard to the TCB's envisaged risk profile, and the relative performance compared to peers. To support this assessment, competent authorities may refer to the most common profitability and risk indicators, reflecting the type and level of risk envisaged by the TCB to generate profits;
- j) where appropriate and proportionate, perform a breakdown of revenues / source of income to understand whether the expected sources are consistent with the overall business strategy (type of business model, size of business);
- k) review the target cost structure (e.g. labour, administrative or IT costs) in absolute terms, and where appropriate and possible, compared to peers;
- l) pay attention to cost concentrations.

27. The competent authority's assessment of the business plan should not enter into the merits of management choices, which remain within the scope of the autonomy of the applicant head undertaking. However, the competent authority may ask the applicant head undertaking to adopt changes to the TCB's business plan that are necessary to ensure compliance with sound and prudent management.

4. Assessment of internal governance and risk management framework of the TCB

28. Competent authorities should assess the suitability of the at least two persons effectively directing the business of the TCB or, where applicable, the members of the local management committee, in accordance with the requirements laid down in the *Joint EBA and ESMA GLs on*

*suitability of members of the management body and key function holders*²⁰. Where applicable, competent authorities should also assess the suitability of the key function holder(s) in accordance with the same Joint EBA and ESMA Guidelines.

29. Competent authorities should assess the applicant's internal governance arrangements, based on the information provided by the applicant, in accordance with the requirements of chapter 7.2 of the draft revised EBA GLs on internal governance²¹.
30. As part of the review of the internal governance arrangements, having regard in particular to the risk management framework, competent authorities should satisfy themselves that all relevant risks are covered, including potential risks related to the instruments constituting the capital endowment and those fulfilling the liquidity requirement.
31. Competent authorities should pay attention that back-to-back booking practices or intragroup operations – where envisaged – are not planned to an extent to deprive the TCB of the purpose and rationale of its presence in the relevant Member State, turning them into 'empty shells' that circumvent legal and regulatory requirements. This assessment should also focus on the consistency of such practices with risk management requirements, and the extent of revenue dependence.
32. Competent authorities should assess, where relevant, the applicant's third-party arrangements, including intragroup arrangements, regarding important or critical functions provided by third party service providers, in accordance with the EBA Guidelines on the sound management of third-party risk²².

5. Assessment of AML/CFT requirements applicable to the TCB

33. When assessing whether there are reasonable grounds to suspect if the TCB would be used to commit or facilitate the commission of ML/TF, competent authorities should at least:
 - a) take into account the statement(s) of third country competent authority(ies) (as per point (g) of Section 1, paragraph (2), of Part I of these draft Guidelines) in relation of the good repute of the applicant head undertaking, the intermediate and parent head undertaking its controlling shareholders, ultimate beneficial owners and members of the management body in management function, in particular: (i) their geographical location in countries that are considered high-risk and non-cooperative by the FATF or that have not implemented the FATF's recommendations in this area; (ii) their involvement in money laundering, terrorist financing or any other financial crime, regardless of whether they have been convicted;
 - b) assess the adequacy of the TCB's proposed internal systems and controls and resources dedicated to the TCB's AML/CFT compliance function and the knowledge and skills of the persons who will be in charge of the TCB's AML/CFT compliance.

²⁰ https://www.eba.europa.eu/sites/default/files/documents/10180/106695/ad951633-f9bf-4cb0-b4c4-5b3fc7b87f0b/Compliance-GL-2012_06.pdf

²¹ <https://www.eba.europa.eu/sites/default/files/2025-08/654f1ca6-0cad-4a2a-b85c-dd2abfae5fe6/Consultation%20Paper%20on%20draft%20amended%20Guidelines%20on%20internal%20governance.pdf>

²² <https://www.eba.europa.eu/sites/default/files/documents/10180/2551996/38c80601-f5d7-4855-8ba3-702423665479/EBA%20revised%20Guidelines%20on%20outsourcing%20arrangements.pdf>

34. Competent authorities should consult the AML/CFT competent authority in accordance with Article 48(c)5 of CRD, and subsequently assess the level of expected prudential impact of the following:
- a) the knowledge and skills of the person responsible for the TCB's compliance with AML/CFT requirements in the Member State where the application for authorisation has been submitted. This assessment should cover the person's adequate knowledge of the local laws and regulations governing AML/CFT of the MS of the TCB.;
 - b) whether the envisaged TCB's ML/TF risk assessment is plausible in light of the TCB's size, business model and target customers; whether it captures adequately the inherent risk factors relating to the target customers, product and services offered and distribution channels used;
 - c) whether the arrangements and resources dedicated to the TCB's AML/CFT compliance function are sufficient in light of the level of ML/TF risks identified in the TCB's ML/TF risk assessment;
 - d) the adequacy of the AML/CF-related policies and procedures of the TCB's internal systems and controls. The assessment should also focus on how the proposed key policies and procedures would allow the TCB to mitigate the ML/TF risks identified in the ML/TF risk assessment of the TCB the day of its access to the market.
35. When assessing the above AML/CFT related policies and procedures, competent authorities should take a holistic approach to the assessment and use all information submitted as part of the authorisation. Accordingly, information submitted for the AML/CFT assessment should be complemented by other information, including, but not limited to the business plan, the information submitted on the internal governance and risk management.

6. Assessment of the minimum capital endowment requirement

36. Competent authorities should ensure that the envisaged TCB will hold at authorisation the applicable minimum fixed capital endowment referred to in Article 48e(1), points (a) or (b) CRD, depending on whether the applicant TCB is categorised as class 1 or class 2, based on the competent authority's overall assessment of the application against the elements listed in Article 48a(1) and (2) CRD. Along the same lines, the minimum capital endowment should cover the average of the projected liabilities for the three-year business plan time horizon.
37. Competent authorities should satisfy themselves of the eligibility of the instruments composing the capital endowment, in particular that they are for unrestricted and immediate use by the TCB to cover risks or losses as soon as those risks or losses occur and that they are suitable to be deposited in escrow in accordance with Article 48e(3) CRD, in accordance with the requirements set out Article 48e(2) CRD and with the draft EBA Guidelines on the instruments meeting requirements for the capital endowment .
38. For this purpose, competent authorities should also review the draft contract(s) to deposit the eligible assets in escrow in accordance with Article 48e(3) CRD, in particular they should verify that the "escrow account is held in the Member State where the branch is authorised with a credit institution that is not part of its head undertaking's group or, where permitted under national law, with the central bank of the Member State". Furthermore, taking into account the minimum operational requirements set out in the draft EBA Guidelines on the instruments meeting requirements for the capital endowment , competent authorities should assess that the contractual provisions ensure compliance with the minimum capital

endowment requirement at all times and the availability of such eligible instruments in case of resolution or winding-up of the third country branch in accordance with Article 48e(3) CRD.

39. Competent authorities should review that the origin of the instruments is legitimate and that adequate arrangements are in place to ensure that they are held on the TCB books.
40. Competent authorities should verify that the applicant head undertaking has deposited the eligible instruments meeting the capital endowment requirement in the escrow account. Where such eligible instruments have not yet been deposited in part or in total at the time of the submission of the application for authorisation, competent authorities should ensure that the applicant head undertaking has committed in the application for authorisation to deposit such eligible instruments at the latest prior to the moment when the authorisation to establish a TCB, where granted, becomes effective in accordance with national law.

7. Assessment of the liquidity requirement

41. Competent authorities should achieve a clear view on the funding needs of the TCB's business and assess the liquidity profile based on the business plan, including the financial forecasts of the envisaged TCB.
42. The review should also focus on the liability structure, having regard to the different sources of funding – in particular any commitment by the head undertaking, the types of liabilities, instruments and counterparties –, the related costs and their maturities.
43. Competent authorities should assess whether the planned cross-border intra-group funding arrangements are within the limits of the exception set out in Article 48c(4), point (d) CRD and do not disguise cross-border business activities in breach of the territorial scope of the authorisation. Such review should, for example, consider whether agreements with TCBs in other Member States - belonging to the same head undertaking - envisage the provision or receipt of intra-group funding in exchange for a full or partial sharing of the economic risks and returns associated with a specific asset.
44. Competent authorities should achieve a clear view on the liquidity profile and the liability structure also to assess the projections for the regulatory liquidity ratios, and the envisaged TCB's ability to "to maintain at all times a volume of unencumbered and liquid assets sufficient to cover liquidity outflows over a minimum period of 30 days" in accordance with Article 48f(1) CRD, for the three-year time horizon of the business plan. For this purpose, competent authorities should also pay attention, where relevant, to the gradual increase in business activities and the implementation of the funding structure in the set-up phase.
45. Where, based on the competent authorities' review of the application against the elements listed in Article 48a(1) and (2) CRD, the envisaged TCB is categorised within class 1, competent authorities should perform such assessment in respect of the liquidity coverage requirement laid down in Part Six, Title I, of Regulation (EU) No 575/2013 and in Commission Delegated Regulation (EU) 2015/61 referred to in Article 48f(2) CRD.
46. With regard to the liability structure, competent authorities should assess the different sources of funding (types of liabilities, instruments and counterparties), the related costs and their maturities.
47. Competent authorities should verify that the assets to meet liquidity requirements are unencumbered and liquid. For this purpose, they should take into account the nature of the assets, the terms and conditions of the agreements from which the assets originate and any

other relevant feature. Along these lines, competent authorities should verify that the eligible instruments constituting the capital endowment and deposited in the escrow account are not counted towards the liquidity requirement, since such instruments have to be considered encumbered and therefore unavailable to meet the liquidity outflows of TCBs. Similarly, competent authorities should make sure that the assets fulfilling the liquidity requirement are not counted towards the capital endowment requirement.

48. Competent authorities should verify that the liquid assets are or will be deposited with a credit institution located in the Member State where the branch is to be authorised that is not part of its head undertaking's group or, where permitted under national law, with the central bank of the Member State, making sure that the account used is different from that where the eligible instruments to meet the capital endowment requirement are deposited in escrow and that the account arrangements do not allow encumbering the liquid assets.
49. Subject to the outcome of the assessment on whether the envisaged TCB will meet the conditions referred to in Article 48b(1) CRD to qualify as a qualifying TCB, , competent authorities may grant the liquidity waiver set out in Article 48f(4) CRD also at authorisation in accordance with national law.
50. Consistently with the proportionality, competent authorities should assess the envisaged TCB ability and preparedness to withstand funding stress, and where relevant, review the impact of the submitted funding and liquidity stress scenario, such as a rise of funding costs, on the liquidity ratios and the remedies envisaged by the applicant head undertaking.
51. In order to assess the overall preparedness to withstand liquidity stress, the competent authority should review the information submitted in accordance with Section 6 of Part I.

8. Assessment of the booking arrangements of the TCB

52. Competent authorities should satisfy themselves that the TCB has put in place adequate processes to maintain a registry book that enabling the TCB to record all its assets and liabilities booked or originated, and off-balance sheet items.
53. Competent authorities should assess the adequacy and completeness of the policies, processes and procedures established to maintain a registry book and that they are suitable for ensuring compliance with the requirements provided in the draft EBA RTS on booking arrangements.
54. Competent authorities should satisfy themselves that such policy outlines the booking and hedging strategies for the different types of transactions, as well as the associated procedures, controls and governance framework.
55. Competent authorities should verify that the booking arrangements set out in the policy are aligned to the TCB business strategy. The policy should clearly lay out anticipated intragroup operations and the management of risks arising from these operations.
56. In relation to back-to-back arrangements, competent authorities should verify that the policy does not envisage to systematically or substantially rely on back-to-back hedging strategies or intragroup risk transfers.
57. Competent authorities should verify that the policy has been approved by the governing body of the applicant head undertaking.

Part III Procedural elements

1. Process

58. Upon receipt of an application for authorisation to establish a TCB, competent authorities should send an acknowledgment of receipt to the applicant head undertaking.
59. Competent authorities should satisfy themselves that the notification is complete with all information and documents listed in Part I of these draft Guidelines and any other information or document requested under national law. For this purpose, competent authorities should request any missing information or document.
60. Upon an application being assessed as complete, following the receipt of the last piece of information or document, the competent authority should inform the applicant head undertaking that the application is complete, and of the start and end date of the assessment period.
61. In case of changes in the information submitted with the application, the applicant head undertaking should promptly inform the competent authority and submit the updated information.
62. The competent authority should inform the applicant head undertaking of the relevant milestones of the assessment procedure and should be able to request clarifications, including additional information, on the submitted application.
63. Competent authorities should finalise the assessment within 6 months from the start of the assessment period or at in any case within the 12 months from the receipt of the application.
64. Competent authorities should consult and exchange information with the third country competent authority or authorities responsible for the prudential supervision of the head undertaking(s).
65. Where the statement of non-opposition by the third country competent authority(ies) set out in Part I, Section 1, paragraph (2), point (g) of these draft Guidelines is not submitted by the applicant head undertaking in the application due to justified reasons, competent authorities should contact the third country authority of the applicant, intermediate and ultimate parent head undertaking as applicable, to obtain confirmation in writing that there are no grounds to oppose the establishment of the TCB.
66. Based on Article 48c(5) CRD, competent authorities have to consult the AML/CFT competent authority of the Member State where the application for the establishment of the TCB has been submitted. Such consultation should take place in accordance with the EBA guidelines on cooperation between competent authorities and AML/CFT supervisors and FIUs ²³.
67. Considering the complexity of the application due to the different applicable laws, applicant head undertakings are encouraged to contact the competent authority prior the submission of the application.

²³ https://eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-15%20GL%20on%20CFT%20cooperation/1025384/Final%20AML-CFT%20Cooperation%20Guidelines.pdf.

Consultation question n. 4

Do you agree that this Section on procedural elements provides sufficient clarity and flexibility to the assessment process?

Annex I

Draft Letter to the third country authority on the compliance of head undertaking and/or its group with prudential requirements

Date:

FROM:

Name of the competent authority

Department/Unit

Address:

Name of the contact person:

Telephone:

Email:

TO:

Name of the third country competent authority of the applicant head undertaking:

Department/Unit

Address:

Name of the contact person

Telephone:

Email:

Re: application of [*name of the applicant head undertaking*] to establish a third country branch in [*name of the Member State*]

Dear Sir/Madame

We contact you in relation to the application for authorisation to establish a third country branch in [*Member State*] submitted by [*name of applicant head undertaking*] on [*date of receipt of application*]

For purposes of the assessment of the application, we seek your confirmation that based on the prudential situation of the applicant head undertaking on an individual basis/ intermediate head undertaking on a sub-consolidated basis/ ultimate parent undertaking on a consolidated basis [*please select the appropriate*] you have no grounds to oppose the establishment of the third country branch in [*name of the Member State*] and that the [*name of the applicant/intermediate/ultimate parent head undertaking - please select the appropriate*] will be able to comply with the applicable prudential requirements for at least the 12 months following the issuance of the authorisation.

Such statement of non-opposition to the establishment of the third country branch should be based in particular on:

- the compliance with own funds, own funds requirements, LCR, NSFR and leverage ratio requirement, as applicable,
- the adequacy of the organisational, administrative and accounting structures, and

the good reputation of a) the applicant/intermediate/ultimate parent head undertaking [*please select the appropriate*], b) of the members of their respective management body and c) their controlling shareholders and ultimate beneficial owners. Such assessment should consider any breach of laws or regulations that are relevant for the prudential framework of your jurisdiction such as violations of prudential regulations, insolvency, commercial crimes, conviction or involvement in money laundering and terrorist financing, occurred in the past ten years or other shorter period as applicable under third country prudential law, including under pending procedure or investigation. Where relevant, specific information about any such conviction, breach of laws or regulation relevant for the prudential framework of your jurisdiction, as well as any pending procedures, investigations or involvements should be provided;

- the submitted application that you have received from [*name of the head undertaking*] on [*date*].

Yours sincerely,

Name and last name

[*signature*]

Annex II
Submission letter

Date:

Reference number:

Name of the applicant head undertaking:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

This is an application for authorisation to the establishment of a third-country branch in accordance with Directive 2013/36/EU (the 'Directive').

We certify that the information provided in this application is true, accurate, complete and not misleading. Unless specifically stipulated otherwise, the information speaks as of the date of this application. Where certain information is expressed to speak as of a future date, this is specifically set out in the application, and we undertake to notify the authority in writing if any such information is not true, accurate and complete or is misleading as of the date specified in the application in respect of such information.

[Name of the applicant head undertaking]

By:

Name and last name:

Position

Annex III**Template for submission of the application**

(The listed requirements intend to replicate the information listed in Part I of the Guidelines which prevails)

Table 1: Information about the identity of the applicant, intermediate and ultimate parent head undertaking (head undertaking) as per Section 1 of Part I of the draft Guidelines

1.1 Identification of the head undertaking. Please fill-in separate section for each relevant head undertaking)	
Legal name, legal form, date and place of incorporation, website and any other communication channel used, of the applicant head undertaking	
Country and address of registered office, and of the administrative headquarter, if different.	
Name of the public register where the applicant head undertaking is registered and the registration number (Where applicable)	
The Legal Entity Identifier (LEI), if any, of the applicant head undertaking (where available)	
1.2 Contact person for the application within the head undertaking. Please fill-in separate section for each relevant head undertaking	
Name of the head undertaking	
Title	
Full name	
Position	
Telephone	
Mobile number	
Email	
1.3 Principal professional adviser of the head undertaking (where relevant and applicable). Please fill-in separate section for each relevant head undertaking)	
Name of the head undertaking	
Title	
Full name	
Position	
Telephone	
Mobile number	
Email	
1.4 Person within the third country competent authority in charge of the supervision of the head undertaking or, if different, of the relevant activities (please fill-in a separate section of the table for each relevant person)	
Title	
Full name	
Authority and organisational unit / name of the relevant head undertaking	
Position	
Telephone	
(Mobile number)	
Email	

1.5 Additional information on the applicant head undertaking	
a) Confirmation that the core banking services the applicant head undertaking seeks authorisation for are covered by the authorisation in the third country; or b) where the activities of lending or the provision of guarantees or commitment are not subject to authorisation in the third country, confirmation that the applicant head undertaking carries out such core banking services in the third country and it is subject to prudential regulation and supervision for these activities in the third country.	
1.7 Independent, reasoned legal opinion on the absence of impediments in the third country's framework precluding the ability of the TCB to comply with the EU and Member State legislation and regulation	
1.8 Confirmation of the notification of the application and related documents by the applicant head undertaking to the third country competent authority	

2.1 Structure of the applicant head undertaking and its group	
Corporate chart of the group of the applicant head, including the intermediate and the ultimate parent head undertaking, and the geographic areas of establishment and of activity of the entities which are part of the TCG. Where the TCG has one or more EU subsidiaries which are financial sector entities or TCBs or the authorisation of which is pending, the indication of the Member State and relevant authority and contact person. Where applicable, the chart should also indicate any ongoing corporate operations (e.g. mergers or acquisitions, establishment of new subsidiaries and/or other new branches in the EU) which may significantly impact the prudential situation and the organisational structure of the applicant head undertaking	
2.2 Identity of the members of the management body in management function of the applicant head undertaking, intermediate and ultimate parent undertaking, as specified below. With regard to the applicant head undertaking, please indicate the member of the management body who is the reporting line of the envisaged TCB. Please fill-in separate copy of this section of the table for each member each applicable head undertaking.	
Name of the head undertaking	
Name and last name and, if different, name at birth	
Place and date of birth	
Gender	
Country of residence and address	
Nationality	
Telephone number	

Mobile	
Email address	
Copy of passport, ID card or equivalent	
In case of member of the management body of the applicant head undertaking, please specify whether the person is the reporting line of the envisaged TCB ()	Yes No
2.3 Chart of the capital structure of the applicant head undertaking with the identification of the direct controlling shareholders and of the ultimate beneficial owner(s)	
2.4 Audited financial statements of the last three years of the head undertaking on a solo and where applicable on consolidated basis, including a summary note describing the operations of the head undertaking or its group	
2.5 Where provided directly to the applicant head undertaking, statement of no opposition to the establishment of a TCB issued by the third country competent authority of the applicant head undertaking, of the intermediate and of the ultimate parent head undertaking, as applicable, covering all prudential elements relating to the good standing as well as the elements relevant to the reputation, listed in Part I, Section 1, point (g) of paragraph (2) of the Guidelines	

Table 3 Programme of operations of the TCB: business plan as per Section 2 of Part I of the draft Guidelines

3.1 The application should contain all relevant information to categorise the envisaged TCB as class 1 or class 2 as per Article 48b(1) CRD	
3.2 Business plan on a base case and a stress scenario basis, for the three years following access to the market of the TCB upon grant of the authorisation, including the following qualitative and quantitative information:	
Intended location of establishment and address of the TCB	
Estimated date at which business operations of the TCB are intended to commence	
The applicant head undertaking's business rationale and business strategy for the establishment of the TCB and the consistency with its business plan	
List of planned activities, including description of the core banking services, of any other financial service requiring a license under national law, of the non-financial activities that the TCB intends to carry out, and the related risks, as well as the target customers	
Where the envisaged TCB plans to collect deposits from the public, confirmation by the applicant head undertaking to make the TCB become member of a deposit guarantee scheme of the Member State where the application has been submitted	

Financial projections including forecast accounting plans, forecast annual reports, the forecast financial statements (namely the balance sheet, the profit and loss accounts or income statements and, where available, the cash flow statements);	
Forecast calculation of any prudential ratio imposed by national law	

Table 4 Programme of operation: Internal governance and risk management of the TCB as per Section 3 of Part I of the draft Guidelines

4.1 Chart of the planned TCB organisational structure accompanied by relevant explanations	
4.2 Persons who will effectively direct the TCB, or members of the local management committee where applicable. Please complete a separate copy of the table for each person	
Name and last name and, if different, name at birth	
Gender	
Place and date of birth	
Country of residence and address	
Telephone number	
Mobile	
Email address	
Nationality	
Copy of passport, of the ID card or equivalent	
Information for the internal suitability assessment set out in the EBA RTS on information and documentation to carry out the suitability assessment of the members of the management body under article 91 of CRD or under the Joint EBA and ESMA Guidelines on suitability assessment, as applicable	
Where available, most recent internal suitability assessment of each of the – at least two persons – who will effectively direct the TCB, or where applicable, of each member of the local management committee	
Description of the persons' key duties and responsibilities	
Rules of procedure for the local management committee (where applicable)	
4.3 Key function holders. Please complete a separate copy of this section of the table for each person	
Where available, the internal suitability assessment, and where applicable in accordance with national law, the supporting information for the competent authority's suitability assessment in accordance with the EBA RTS on information and documentation to carry out the suitability assessment of the members of the management body under article 91 of CRD ²⁴ and in the <i>Joint EBA and ESMA</i>	

²⁴ Consultation paper on the RTS on documentation to be submitted to competent authority for suitability assessment of members of the management body and key function holders of large institutions under Article 91(10) of Directive 2013/36/EU available at www.eba.europa.eu

<i>Guidelines on the suitability assessment of suitability of the members of the management body.</i>	
Name and last name and, if different, name at birth	
Gender	
Place and date of birth	
Country of residence and address	
Telephone number	
Mobile	
Email address	
Nationality	
Copy of passport, ID card or equivalent	
Most recent internal suitability assessment	
4.4 Policies and procedure on internal control functions. i.e risk management, compliance, compliance and internal audit	
Description of the reporting lines between the internal control functions and the persons effectively directing the TCB's business and, where applicable, the local management committee, with the management body of the head undertaking	
4.5 Outline of the TCB's credit risk policy and, where applicable, rules of procedure of the credit risk committee	
4.6 Outline of the TCB's remuneration policy	
Description of the ICT strategy, including ICT risk management framework compliant with Regulation (EU) 2022/2554 on digital operational resilience for the financial sector;	
Description of the third-party arrangements regarding the provision or the support of critical or important functions;	
Details of internal arrangements under which critical or important functions of the TCB are performed by its head undertaking;	
Outline of the business continuity plan, and information on the coverage of the TCB by the recovery plan of the applicant head undertaking	

Table 5: Programme of operations: information on AML/CFT requirements as per Section 4 of Part I of the draft Guidelines

5.1 Person responsible for the TCB's compliance with AML/CFT requirements in the Member State in which it seeks authorisation	
Name and last name and, if different, name at birth	
Gender	
Place and date of birth	
Country of residence and address	
Nationality	
Copy of passport, ID card or equivalent	
5.2 ML/TF Framework	

Business-wide ML/TF risk assessment of the TCB, having regard to the inherent risk factors relating to the nature and characteristics of its target customer bases, the products and services offered and distribution channels used	
Description of the TCB's governance arrangements and resources dedicated to its AML/CFT compliance function and the applicant's assessment of the adequacy of those arrangements and resources	
Description of the envisaged AML/CFT related internal systems and controls and how they respond to the ML/TF risks identified in the ML/TF risk assessment in light of the risks identified in the ML/TF risk assessment	
Description of the origin of the resources that constitute the capital endowment, and the channel used for the transfer of the instruments that will be part of the capital endowment	

Table 6: Capital endowment as per Section 5 of Part I of the draft Guidelines

6.1 Forecast determination of the capital endowment requirement relying on the financial forecasts included in the business plan, based on the envisaged class of the TCB, in accordance with Article 48e CRD	
6.2 List of the envisaged instruments that will compose the capital endowment at the time of the submission of the application for authorisation and a statement that they meet the conditions laid down in the EBA Guidelines on the instruments meeting requirements for the capital endowment	
6.3 Copy of the contract of the escrow account in accordance with Article 48e(3) CRD	
6.4 Evidence that the capital endowment is deposited in an escrow account or if it has not yet been deposited in part or in total at the time of the submission of the application for authorisation, indication of the timeline for such deposit before the authorisation to commence the activity as a TCB is effective in accordance with national law	
6.5 Description of arrangements, strategies, processes and mechanisms to meet the capital endowment requirement on a continuous basis	

Table 7 Liquidity requirements as per Section 6 of Part I of the draft Guidelines

7.1 Forecast determination of the liquidity requirement relying on the financial forecasts included in the business plan	
7.2 Funding strategy and liquidity planning	

7.3 Description of the envisaged funding sources of the TCB, including of any intragroup funding arrangements within the limits of the exception set out Article 48c, point (d) CRD	
7.4 Confirmation that the liquid assets destined to meet the liquidity requirements are unencumbered and that the assets fulfilling the liquidity requirement are not counted towards the capital endowment requirement	
7.5 Evidence that the liquid assets are deposited in an account in accordance with Article 48f CRD or where the liquid assets have not yet been deposited in part of in total at the time of the submission of the application, indication of the timeline to deposit such liquid assets before the authorisation to commence the activity as a third country branch is effective in accordance with national law	
7.6 Description of the liquidity governance arrangements demonstrating the capacity to manage the liquidity in the base case and stress scenario basis, including: - the ability to compute the applicable liquidity requirements in accordance with Art. 48f(1) and (2) CRD, - as well as an outline of the liquidity internal controls framework	

Table 8 Programme of operations: booking arrangements as per Section 7 of Part I of the draft Guidelines

8.1 Relevant policies with a description of the processes and procedures established to maintain the registry book and record all the assets and liabilities booked or originated by the third country branch, as well as off balance sheet items, as referred in Article 48h (1) of CRD	
8.2 Policy on booking arrangements for the management of the registry book referred in Article 48h (2) of CRD, with clear rationale the booking arrangements, including planned intragroup funding transactions, hedging arrangements or other transfers of risks, and set out how those arrangements align with the TCB's business and risk management strategy	
8.3 Evidence of the approval of the policy on booking arrangements by the governing body of the head undertaking	

Table 9 Exemption from submission of information as per Section 8 of Part I

9.1 Where the circumstances set out in Section 8 of Part I of the Guidelines are met, submission of a declaration indicating the information listed in Part I, Sections 1 that has not materially changed since prior application and confirmation that it is still true, accurate and up-to-date	
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5. Accompanying documents

5.1. Draft cost-benefit analysis

5.1.1. Problem identification

The further harmonisation of the regime applicable to of the TCBs aims to introduce minimum common requirements for the regulation and supervision of TCBs in the interest of sound and prudent management and to level the playing field across the EU. This regime was recommended by the EBA in its report under Article 21b(10) of Directive 2013/36/EU, submitted to the European Parliament, to the Council and to the Commission in June 2021, on the treatment of third-country branches under national law of the Member States. In particular, it was recommended that the authorisation regime for TCBs to be harmonised across EU Member states. This is because EU Member States' approaches and practices to authorisation of TCBs currently varies significantly. The majority of Members States apply the so-called subsidiary-like approach for the authorisation regime; but other regimes exist such as the branch-specific approach (i.e. not requesting capital requirement at authorisation) or simplified treatment (i.e. involving the possibility for MSs to use exemptions and waivers).

The EBA has been mandated by Article 48c(8) CRD to develop Guidelines on the authorisation of TCBs, covering the information and documents to be included in the application for the authorisation, the conditions for reliance by the competent authority on information already submitted by the applicant head undertaking on information submitted in prior authorisation procedures, the methodology and the process for the review and assessment of the application aimed at evaluating whether the conditions for authorisation are met in the specific case or whether the authorisation has to be refused based on the grounds expressly set out in Article 48d. The mandate also envisages the development of standard forms and templates for the submission of the application to facilitate harmonisation of practices across Member States.

5.1.2. Policy objectives

Establishing a minimum EU common and harmonised EU-wide regime for the authorisation practices of TCBs will create transparency and level playing field to applicants on the one hand, and, on the other hand, will ensure a harmonised and proportionate way to competent authorities to assess authorisation requests irrespectively to which Member State the authorisation is filed. It will contribute to enhancing supervisory convergence, legal clarity, and will avoid regulatory arbitrage opportunities to applicants.

5.1.3. Baseline scenario

Under the baseline scenario, the EBA does not specify neither the information to be included in the application nor the methodology and process for the assessment of the application. Thus, the objective of harmonising the regime applicable to the establishment of TCBs in the relevant Member States would not be achieved.

Article 48c(4) of the CRD lays down the minimum conditions that need to be met for granting authorisation, Article 48d CRD lays down the minimum grounds for refusal or withdrawal of the authorisation.

The conditions for granting authorisation concern: (i) meeting of prudential requirements set out in CRD; (ii) objective and territorial scope of the authorisation; (iii) cooperation and exchange of information with the third country authority. The prudential requirements concern the capital endowment, liquidity, internal governance, booking arrangements, minimum common reporting requirements and the AML/CFT requirements.

5.1.4. Options considered

Policy issue 1: Consistency with the other EBA regulatory products on applicable prudential requirements

The grant of authorisation is subject to a forward-looking assessment of the application, and in particular of the plan of operations, aimed at evaluating whether the envisaged TCB will be able to comply with the applicable prudential requirements once the authorisation is granted. It is important to ensure consistency and continuity between the authorisation phase and the going concern phase. For this purpose, these Guidelines have to be aligned not only with the relevant provision of the CRD, but also with the specific regulatory products that the EBA has been mandated to develop harmonise the framework applicable to TCBs. Such regulatory products include the Guidelines on internal governance, the draft Guidelines on capital endowment and the draft RTS on booking arrangements.

Option 1a: the content of the other relevant regulatory products applicable to TCBs should be copy pasted in these Guidelines.

This option would create overly descriptive and long Guidelines for the authorisation process, create duplication and make these Guidelines vulnerable to any forthcoming situations where any of the underlying specific EBA mandates change or are being revised.

Option 1b: elaborate specific guidance for the relevant prudential requirements for the assessment at authorisation.

This option would entail duplication risks, excessive burden and inconsistency with the regime applicable in going concern as developed by the EBA in the other regulatory products.

Option 1c: cross reference to the relevant EBA regulatory products on the regimen applicable to TCBs should be set out whenever possible.

This option avoids duplication of work and inconsistency between the authorisation and the going concern stage.

Option 1c is therefore the preferred option.

Policy issue 2: How to obtain the confirmation for non-opposition from the third country competent authority?

Since the TCB is not a separate legal entity from the head undertaking, the forward-looking assessment of the safety and soundness of the TCB significantly relies on the good standing of the

head undertaking. Cooperation and exchange with the third country competent authority of the head undertaking is equally crucial. For this purpose, it is critical that the third country authority confirms that there are no grounds of opposition to the establishment of the TCB in the Member State. This confirmation should also cover the good repute of the members of the management body and the compliance with the prudential requirements applicable to each relevant head undertaking.

There are diverging practices request and the content of such non-opposition statement.

Option 2a: leave competent authorities the discretion about the scope of assessment of the third country authority in relation to the applicant head undertaking.

This option would run the risk of differentiated assessments by the third country authority depending on the Member State where the authorisation for the establishment of the TCB is sought.

Option 2b: lay down a common perimeter for the assessment by the third country authority by specifying the compliance of the prudential requirements which needs to be checked by the third country competent authority

Option 2b is the preferred option.

Policy option 3: The mandate requires the EBA to lay down the criteria to consider the information submitted by the applicant head undertaking in any other prior authorisation as TCB, however does not further specify how such reliance can be used by the competent authority or what procedural steps should be taken to use such information that is considered reliable

Option 3a: leave it to each competent authority to decide when such information may be used and upon the completion of what procedural steps

This option would not provide any added value to the application process and would not avoid duplication of burden by the applicant head undertaking.

Option 3b: lay down common criteria to consider the information submitted in previous application procedures and 'operationalise' such reliance within the application process as an exemption provided the conditions set out in the Guidelines are met.

Option 3b is the preferred option since it achieves substantive and procedural harmonisation and promotes efficient procedures across the EU.

Option 3b is the preferred option.

5.1.5. Cost-Benefit Analysis

The impact of implementing the guidelines may vary depending on the regime already in place in the various Member States. The impact is expected to be limited for TCBs and for supervisors in those jurisdictions that rely on an authorisation regime similar to that of the CRD, whereas is expected to be more significant for those Member States that do not have any regime on TCB in place so far.

The Guidelines have the merit of facilitating the implementation of the CRD, identify the relevant information and documents to be requested to check whether the conditions for authorisation set out in Article 48c(4) are met and support the transparency of the process by providing common forms and templates.

The benefits from the implementation of the guidelines are related to the assurance of harmonised content of the applicant and assessment methodology, as well as of the assessment process across Members States, which ensures transparency, predictability and legal certainty to applicants.

5.2. Overview of questions for consultation

1. Do you have any comment on the coverage of the statement of non-opposition to be issued by the third country competent authority?
2. Do you have any comment on the information requested on the programme of operations?
3. Do you have any comment on the circumstances to be met to consider reliable the information provided in any prior authorisation procedure to establish a TCB?
4. Do you agree that this Section III on procedural elements provides sufficient clarity and flexibility to the assessment process?

5.3. Views of the Banking Stakeholder Group (BSG) [where applicable]

5.4. Feedback on the public consultation and on the opinion of the BSG [where applicable]

Summary of key issues and the EBA's response

Summary of responses to the consultation and the EBA’s analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Responses to questions in Consultation Paper EBA/CP/20xx/xx			
Question 1.			
Question 2.			
Question 3.			

(...)