

EBA/GL/2026/03

02/03/2026

Final report

Guidelines on instruments available for third country branches for unrestricted and immediate use to cover risks or losses under Article 48e(2)(c) of Directive 2013/36/EU

Contents

<u>1.Executive Summary</u>	<u>3</u>
<u>2.Background and rationale</u>	<u>4</u>
<u>3.Guidelines</u>	<u>7</u>
<u>4.Accompanying documents</u>	<u>14</u>
<u>4.1Draft cost-benefit analysis</u>	<u>14</u>
<u>4.2Feedback on the public consultation</u>	<u>18</u>

1. Executive Summary

Third country branches (TCBs) have a significant and increasing presence in EU banking markets, which made it necessary to establish a common prudential framework with minimum common requirements, among them the minimum capital endowment requirement.

As part of this framework, the new Article 48e introduced in the Directive 2013/36/EU a minimum capital endowment requirement that TCBs shall always maintain and that shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law. The ultimate objective of the capital endowment requirement is that segregated assets protect local depositors at the level of the TCB or they remain available to pay appropriate claims and satisfy local creditors, in case of resolution or winding-up of the TCB. This requirement is calculated as a percentage of the branch's liabilities with a minimum nominal amount.

Article 48e(2) of Directive 2013/36/EU sets out the forms of instruments that could be used in case of resolution or winding up of the TCB, and Article 48e(3) of Directive 2013/36/EU requires them to be placed in an escrow account. In addition to cash or cash assimilated instruments and debt securities issued by central governments or central banks of EU Member States, as specified in Article 48e(2) of Directive 2013/36/EU, any other instrument that is available to the TCB for unrestricted and immediate use to cover risks or losses as soon as those occur could be used to meet the requirement.

The EBA is mandated by Article 48e(4) of Directive 2013/36/EU to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirements for such 'other instruments'. The requirement of Article 48e(3) of Directive 2013/36/EU that the instruments should be placed on an escrow account already reduces the choice of available instruments to financial instruments.

The most suitable financial instruments for these purposes are debt securities that would receive a 0% risk weight under the standardised approach for credit risk as per Regulation (EU) No 575/2013 and that are issued or guaranteed by central, regional or local governments or central banks, public sector entities, multilateral development banks or international organisations. In addition, to ensure that these 'other instruments' - and those mentioned in Article 48e(2), points (a) and (b) of Directive 2013/36/EU - are available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the TCB and for the purposes of the winding-up of the TCB, these guidelines also specify the minimum operational conditions that third-country branches should respect.

Next steps

These 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 11 January 2027.

2. Background and rationale

1. In June 2021, the EBA published a Report on the treatment of incoming TCBs (Report) under the national law of Member States. The Report was addressed to the European Parliament, the Council and the Commission and summarised supervisory practices and provided a mapping of the TCBs established in the Member States.
2. Concerning capital requirements, the data collection showed that while the majority of competent authorities (CAs) required TCBs to hold a capital endowment or a minimum initial capital, other CAs did not apply capital requirements for the TCB. In these latter cases, the CAs relied (or collected information) on the third-country credit institution's (TCCI) capital position, overall financial soundness, third-country home authority (TCHA) supervision and close supervisory cooperation.
3. Considering the increased volume of activities carried out by TCBs in the context of regulatory fragmentation across the EU, the Report laid down high-level policy recommendations for further harmonisation of EU law, which facilitated the TCB-related requirements included in Directive (EU) 2024/1619. As a result, Article 1(13) of this Directive introduced a harmonised regulatory framework for TCBs, among them minimum regulatory requirements.
4. The new Article 48e of Directive 2013/36/EU sets a minimum capital endowment requirement for TCBs as part of the establishment of the overall prudential framework, with the aim of supporting the resolution and winding-up of the TCB. In line with Article 48e(1) of Directive 2013/36/EU, this requirement is calculated as a percentage of the liabilities held on the books of the TCB (liabilities booked) as such reported by it in accordance with the reporting framework.
5. TCBs are required to maintain at all times a minimum capital endowment requirement that shall be fulfilled with a) cash or cash assimilated instruments, b) debt securities issued by central governments or central banks of EU Member States and/or with c) any other instrument that is available to the TCB for unrestricted and immediate use to cover risks or losses as soon as those occur. Article 48e(4) of Directive 2013/36/EU mandates the EBA to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirement in relation to these 'other instruments'.
6. As the capital endowment instruments 'shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law', it is essential that TCCIs do not withdraw funds from the TCB which could be used to protect depositors or creditors in case of need. For this reason, the instruments are also required to be held in an escrow account.
7. The objective of these guidelines is twofold. On the one hand, on the basis of the mandate provided to the EBA in accordance with Article 48e(4) of Directive 2013/36/EU, it is to ensure that the capital endowment instruments referred to in Article 48e(2)(c) of the said Directive are available to the

third-country branch for unrestricted and immediate use to cover risks or losses as soon as those risks or losses occur. On the other hand, on the basis of the EBA's own initiative in accordance with Article 16 of Regulation 1093/2010, it is to safeguard that the minimum capital endowment requirement referred to in Article 48e(1) of Directive 2013/36/EU is maintained at all times and all capital endowment instruments deposited in the escrow account including those referred to in Article 48e(2), points (a) and (b) of Directive 2013/36/EU are available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law.

8. Accordingly, the guidelines provide the list of instruments that meet the requirement of Article 48e(2)(c) of Directive 2013/36/EU. However, the capacity of these instruments – and those mentioned in Article 48e(2), points (a) and (b) of Directive 2013/36/EU – to be available in case of resolution or winding-up of the TCB might be compromised if no other requirements are in place. Hence, the guidelines specify the operational conditions that third-country branches should respect.
9. The guidelines are addressed to competent authorities empowered by national law to supervise TCBs. Since Article 48e(3) provides that capital endowment instruments shall be available in the case of resolution or winding-up of the TCB, these guidelines take also into account the requirements for cooperation between competent and resolution authorities as foreseen in the relevant legislation.
10. The specifications laid down in these guidelines are set as a minimum and should not be seen as in any way interfering with the general ability of the national regime or of the competent authority to apply a more rigorous regime on all aspects related to the capital endowment – including by prohibiting the use of instruments otherwise eligible for one or more third-country branches, by imposing additional restrictions upon such instruments, including restrictions on their denominated currency, or by introducing operational requirements for the escrow account where assets used by those third-country branches to fulfil their minimum capital endowment requirements are deposited.
11. It should be noted that TCBs are also subject to minimum liquidity requirements as per Article 48f of Directive 2013/36/EU. In particular, TCBs shall always maintain a volume of unencumbered and liquid assets sufficient to cover liquidity outflows over a minimum period of 30 days. As the liquidity requirements need to be met with unencumbered and liquid assets, they cannot be counted towards the capital endowment requirement which requires the assets to be placed in an escrow account, and vice-versa, assets placed into an escrow account are by definition encumbered and therefore would not be available to meet the liquidity outflows of TCBs.
12. The EBA collected information from EU competent authorities on the existing practices and related national requirements concerning TCBs and also studied the respective capital endowment regimes applicable to TCBs active in US and UK. All this information was considered in the development of these Guidelines as mandated under Article 48e(4) of Directive 2013/36/EU.

3. Guidelines

EBA/GL/2026/03

02/03/2026

Guidelines

on instruments available for third
country branches for unrestricted and
immediate use to cover risks or losses
under Article 48e(2)(c) of
Directive 2013/36/EU

4. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010. 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.
2. 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

3. 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/2026/03'. 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.
4. Notifications will be published on the EBA website, in line with Article 16(3).

5. Subject matter, scope and definitions

Subject matter

5. To ensure that capital endowment instruments referred to in Article 48e(2)(c) of Directive 2013/36/EU are available to the third-country branch for unrestricted and immediate use to cover risks or losses as soon as those risks or losses occur, these guidelines specify, in accordance with Article 48e(4) of that Directive, the requirement laid down in Article 48e(2)(c) in relation to those instruments.
6. To ensure that the minimum capital endowment requirement referred to in Article 48e(1) of Directive 2013/36/EU deposited in the escrow account of Article 48e(3) of that Directive is maintained at all times and is available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law, these guidelines specify minimum operational conditions that third-country branches should respect.

Scope of application

7. These guidelines apply at the level of the third-country branch.
8. These guidelines apply without prejudice to national provisions foreseeing or competent authorities imposing on one or more third-country branches a more rigorous regime concerning the specification of the requirement laid down in Article 48e(2) of Directive 2013/36/EU including for the instruments referred to in point (c) of that paragraph, or operational conditions that third-country branches should respect.

Addressees

9. These guidelines are addressed to competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation No 1093/2010.

6. Implementation

Date of application

10. These guidelines apply from 11 January 2027.

7. Instruments available for unrestricted and immediate use under Article 48e(2)(c) of Directive 2013/36/EU

Eligible Instruments

11. For third-country branches to fulfil the minimum capital endowment requirement referred to in Article 48e of Directive 2013/36/EU, the instruments referred to in paragraph 2 point (c) of that Article should at least comply with paragraphs 12 to 16.
12. The instruments referred to in paragraph 11 should have one of the following forms:
 - a) Debt securities guaranteed by central governments of the European Union or the ESCB central banks;
 - b) Debt securities issued or guaranteed by regional governments or local authorities of Member States provided that the conditions laid down in Article 115(2) of Regulation (EU) No 575/2013 are met;
 - c) Debt securities issued or guaranteed by central, regional or local governments or central banks of third countries which apply supervisory and regulatory arrangements at least equivalent to those applied in the European Union and that would receive a 0% risk weight under the standardised approach as a result of the application of Articles 114(7) and 115(4) of Regulation (EU) No 575/2013;
 - d) Debt securities issued or guaranteed by public sector entities that would receive a 0% risk weight under the standardised approach as a result of the application of Article 116(4) of Regulation (EU) No 575/2013;
 - e) Debt securities issued or guaranteed by the multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;
 - f) Debt securities issued or guaranteed by international organisations listed in Article 118 of Regulation (EU) No 575/2013.
13. For the purposes of the instruments referred to in paragraph 12, point c), third-country branches should consider the currency of their own funding to determine if the capital endowment assets are denominated and funded in the domestic currency in accordance with Article 114(7) of the CRR, first subparagraph of Regulation (EU) No 575/2013.

14. The instruments referred to in paragraph 12 should be listed on a recognised exchange and be easily monetised at any time.
15. They should not be issued by the head undertaking of the third-country branch, by any of its subsidiaries or by a securitisation special purpose entity with which the head undertaking of the third-country branch has close links.
16. For the purposes of determining whether the minimum capital endowment requirement referred to in Article 48e(1) of Directive 2013/36/EU is met, third-country branches should use the market value of the capital endowment assets. Third-country branches should be able to determine the market value of the instruments referred to in paragraph 12 on the basis of widely disseminated and easily available market prices, or, in the absence of such prices, on the basis of an easy-to-calculate formula that uses publicly available inputs and is not significantly dependent upon strong assumptions.

Operational conditions

17. For the purposes of determining whether the minimum capital endowment requirement is met, third-country branches should take into account liabilities held on their books (liabilities booked) and reported as such by them in accordance with the reporting framework in accordance with Commission Delegated Regulation (EU) No .../... [reference to the ITS on reporting for TCBs to be added].
18. Third-country branches should ensure that all the capital endowment assets referred to in points (a) to (c) of Article 48e(2) of Directive 2013/36/EU and deposited in the escrow account are always and continuously available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law.
19. Third-country branches should implement arrangements, strategies, processes and mechanisms to meet their capital endowment requirement on a continuous basis and to comply with the provisions of these Guidelines.
20. The capital endowment assets referred to in points (a) to (c) of Article 48e(2) of Directive 2013/36/EU and deposited in the escrow account should not be counted towards the liquidity requirement of Article 48f of that Directive.
21. Third-country branches should monitor the geographical location of the capital endowment assets (that is the location of the issuer or of the protection provider, where relevant), their concentration risk and the consistency of their currency denomination with the distribution by currency of the liabilities of the third-country branch, especially of any deposits.

22. The capital endowment assets referred to in points (a) to (c) of Article 48e(2) of Directive 2013/36/EU and deposited in the escrow account should be free from any encumbrance, other than an encumbrance needed to ensure that such assets will be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch in accordance with national law.

8. Accompanying documents

1.1 Draft cost-benefit analysis

A. Problem identification

The further harmonisation of the TCB 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 TCBs should be required to hold a minimum capital amount at TCB level, which then informed the relevant requirements included in the banking package. In this context, the new Article 48e introduced a minimum capital endowment requirement in Directive 2013/36/EU that TCBs shall always maintain to ensure that there are assets available to the TCB for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third-country branch and for the purposes of the winding-up of the third-country branch.

The capital endowment requirement of TCBs aims at segregating some assets that could be used to protect local depositors, pay appropriate claims and satisfy local creditors of the TCB in case of the resolution or winding-up of the TCB. This is notwithstanding that the applicable resolution and liquidation regime to which the head undertaking is subject should provide protection to EU-based creditors and depositors, and thus the primary source of loss absorption capacity should be derived from the capital available at the level of the head undertaking. In addition, the deposit guarantee scheme to which the TCB adheres should also provide protection to EU-based depositors.

The EBA is mandated under Article 48e(4) of Directive 2013/36/EU to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify any other instrument that can be used to meet the capital endowment requirement apart from the ones included in points (a) and (b) of Article 48e(2) of Directive 2013/36/EU (i.e. cash or cash assimilated instruments and debt securities issued by central governments or central banks of EU Member States). These guidelines contain the list of the 'other instruments' eligible for this purpose together with operational requirements to ensure that the instruments included in the list of eligible instruments serve their purpose and are readily available in case of resolution or winding-up of the TCB and that these harmonised requirements are applied throughout the EU.

B. Policy objectives

In line with the abovementioned mandate, these guidelines aim at providing a set of instruments and operational conditions to ensure that the capital endowment assets serve the objective of protecting local depositors at the level of the TCB or they remain available to pay appropriate claims

and satisfy local creditors, in case of resolution or winding-up of the TCB. They also aim at harmonising the capital endowment requirement applied to TCBs as a way to achieve a level playing field, preventing regulatory arbitrage opportunities, and enhancing supervisory convergence and legal clarity.

C. Baseline scenario

Article 48e of Directive 2013/36/EU states that Member States shall require TCBs to maintain a minimum capital endowment made of cash, cash assimilated instruments, debt securities issued by central governments or central banks of Member States or any other instrument available to the TCB for unrestricted and immediate use to cover risks or losses as soon as those risks or losses occur.

Under a baseline scenario where the EBA does not specify these ‘any other instruments’, the objective of harmonising the capital endowment requirement applied to TCBs would not be achieved. In addition, the lack of definition could potentially lead to regulatory arbitrage opportunities, lack of convergence in the practices (both at the institution and supervisory level) and legal uncertainty.

D. Options considered

The new Article 48e of Directive 2013/36/EU introduced a minimum capital endowment requirement that TCBs shall always maintain. The consideration of technical options was mainly focused on the eligibility of the assets to fulfil the requirement and the inclusion of certain criteria to ensure that the capital endowment requirement is operational.

Policy option 1: Assets eligible to meet the capital endowment requirement

Option 1: The list of assets only includes debt securities whose risk weight under the standardised approach for credit risk would be 0%.

This option restricts the eligibility of assets to debt securities that would receive a 0% risk weight under the standardised approach for credit risk as per Regulation (EU) No 575/2013 and that are issued or guaranteed by central, regional or local governments or central banks, public sector entities, multilateral development banks or international organisations. In case of resolution or winding-up of the TCB, these assets can be easily monetised and made readily available to protect local depositors or to pay appropriate claims and satisfy local creditors of the TCB.

Option 2: The list also includes collateral from reverse repos.

Concerns were raised with regards to the inclusion of the collateral received from reverse repos into the list of eligible assets, due to their complexity and the uncertainties that they could create in the specific case of capital endowment. Furthermore, from a resolution or liquidation perspective, the sale of these assets provides limited benefit as it creates a new liability. Thus, selling these assets would not improve the loss absorption capacity of the endowment capital.

Option 1 is the preferred option.

Policy option 2: The inclusion of operational conditions

Option 1: The guidelines only include a list of the different types of assets that could be used to meet the minimum capital endowment requirement in addition to those under Article 48e(2)(a) and (b) of the CRD.

Under this option, the guidelines enumerate the instruments that would be eligible for the purposes of the capital endowment requirement, without specifying any operational requirements.

However, the mere list of instruments would not ensure that in case of resolution or winding-up of the TCB, the capital endowment assets can be easily converted into cash and are readily available to protect local depositors or to pay appropriate claims and satisfy local creditors. In addition, this option would make it more difficult for competent authorities to assess the amount of the instruments that would be effectively available for use in the case of resolution of the TCB and for the purposes of the winding-up of the TCB.

Option 2: Operational conditions need to be added to ensure that the assets eligible for the capital endowment requirement can indeed be used in resolution/winding-up.

Under this option, the guidelines will detail operational aspects aimed at ensuring that the capital endowment is readily available when needed (i.e. free from any encumbrance) and its reported value coincides with the actual value that the TCB, the resolution authority or the liquidation authority might expect to obtain from the liquidation of the assets in case of resolution or winding-up of the TCB. The assets used for the purposes of the capital endowment requirement should not be double counted; therefore, they should not be computed towards the liquidity requirement of Article 48f of the CRD. Furthermore, the guidelines will highlight the importance of the implementation of arrangements, strategies, processes and mechanisms to ensure that the capital endowment requirement is met on a continuous basis. Lastly, the guidelines require the identification and monitoring of risks connected to the capital endowment assets.

This option ensures the availability of the assets in case of resolution or winding-up of the TCB.

Option 2 is the preferred option.

E. Cost-Benefit Analysis

The impact of implementing the guidelines may vary depending on the regime already in place in the different Member States. The impact is expected to be limited for TCBs and for supervisors in those jurisdictions that rely on criteria similar to those of the CRR/CRD and decide to make use of the national discretion introduced by Article 48a(4) of the CRD.

In jurisdictions without a requirement in place or where requirements different from the capital endowment or capital endowment-like requirement are currently applied, TCBs will face the cost

of building up the capital endowment in an escrow account and bear the costs related to its monitoring.

Competent authorities from jurisdictions without a capital endowment-like requirement in place will also face additional costs related to additional reporting requirements, the monitoring of the evolution and composition of capital endowment assets held by TCBs, or any needed supervisory action in this area.

The benefits from the implementation of the guidelines are related to the assurance that the assets used to meet the capital endowment serve the objective of protecting local depositors at the level of the TCB in the EU or that they remain available to pay appropriate claims or satisfy local creditors, in case of resolution or winding-up of the TCB. Moreover, the guidelines provide a level playing field in the capital endowment requirement in the EU, preventing regulatory arbitrage opportunities and enhancing supervisory convergence and legal clarity.

1.2 Feedback on the public consultation

The EBA has publicly consulted on the draft proposal for these guidelines. The consultation period lasted for three months and ended on 10 October 2025. Seven responses were received, four of which were published on the EBA website.

Summary of key issues and the EBA response

The vast majority of the respondents did not object to the guidelines and the content was well received. Few comments targeted the list of instruments, while most of the comments provided concerned aspects not related to the EBA mandate under Article 48e(4) of the CRD, e.g. the calculation of the thresholds for the classification of the TCBs, the calculation of the capital endowment requirement or flexibility in the use of capital endowment assets.

This final report presents a summary of the comments raised by stakeholders, the EBA analysis and the actions taken to address them, where deemed necessary, as explained in the feedback table below.

As a result of the public consultation, one clarification on the debt securities under letter c) of the list of capital endowment assets included in paragraph 12 has been added in the guidelines.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Clarification of the definition of the equity side of the 'capital endowment'	One respondent asked for clarification on the equity side of the 'capital endowment' and proposed a definition of the capital endowments as permanently available funds (e.g. allocated capital, retained earnings, other comprehensive income etc.) or instruments provided to the TCB to meet the minimum capital endowment requirement, in the form of cash or cash-assimilated instruments, as defined under the guidelines and subject to full subordination and loss absorption capacity.	<p>Article 48e (2) of the CRD states that the minimum capital endowment requirement shall be fulfilled with assets and the forms of the assets that can be used to meet this requirement are included in the same article and in these guidelines.</p> <p>In addition, competent authorities have the discretion to apply capital requirements to TCBs, including those similar to credit institutions authorised under the CRR/the CRD. Therefore, providing a definition of the capital endowment requirement from the equity side would not be relevant.</p>	n/a
Introduction of flexibility in the application of the requirement	A few respondents asked that the capital endowment requirement cater for the business model (e.g. where the TCB does not take local retail deposits). One asked specifically whether there is scope for competent authorities to grant waivers or adjustments to this requirement on a case-by-case basis.	<p>Article 48e(1) of the CRD already envisages a different minimum capital endowment requirement for Class 1 and Class 2 TCBs. The guidelines should not provide additional flexibility in relation to the use of the assets that are eligible as capital endowment.</p> <p>It is also recalled that competent authorities may impose on one or more TCBs a more rigorous regime than the one of the guidelines, but not a laxer one.</p>	n/a

<p>Clarifications on the calculation of the threshold for classification purposes</p>	<p>One respondent asked whether: i) intragroup transactions can be excluded from the assets calculation for classification purposes, and ii) whether there is room for the competent authorities to apply waivers or adjustments to the classification threshold based on the branch's actual risk profile.</p>	<p>Article 48a of the CRD, establishing the criteria for the classification of TCBs as class 1 and 2, and Article 48e(1) of the CRD already provides for proportionality in the application of the requirement. In this regard, the CRD does not specify exemptions or waivers for assets deriving from intragroup transactions.</p>	<p>n/a</p>
<p>Clarification on the calculation of the requirement</p>	<p>Several respondents asked for the exclusions of the following liabilities from the denominator of the capital endowment requirement: i) intragroup borrowing (e.g. head office funding) as it does not pose a risk of loss to customers and it creates circularity, since, e.g. the endowment would itself need to be financed by Head Office, inflating the branch's balance sheet, ii) market-oriented instruments such as CDs, CPs, and bonds, as professional investors are expected to fully understand their risk profiles, iii) deposits maturing within 30 days, depending on the outflow rates applied in the liquidity coverage ratio (LCR) requirement, iv) interbank counterparties since they involve professional, prudentially regulated institutions that manage counterparty risk as part of their supervisory framework, and v) repos since lenders already hold securities as collateral, meaning that credit risk is substantially mitigated. One respondent also asked whether: i) proportionality will be considered in this context, and ii) there will be scope for the competent authority</p>	<p>The L1 text does not specify the exclusion of intragroup funding, interbank transactions, repos, market-oriented instruments, and deposits maturing within 30 days from the calculation basis. In addition, the EBA is only mandated by Article 48e(4) of the CRD to issue guidelines to specify the requirements for the 'other instruments' referred to in Article 48e(2)(c) of the CRD and not the calculation of the requirement itself.</p> <p>Proportionality is already addressed by Articles 48a and 48e(1) of the CRD. For reasons of proportionality, the minimum requirements imposed on TCB are relative to the risk that they pose to financial stability and market integrity in the Union and the Member States. TCBs therefore are classified as either class 1 or class 2, and Article 48e(1) of the CRD already provide for different minimum capital endowment requirements according to this classification. Therefore, the guidelines cannot provide additional flexibility in relation to the calculation of the capital endowment requirement.</p>	<p>n/a</p>

to grant waivers or adjustments based on the branch's actual risk profile.

Finally, it is recalled that competent authorities may impose on one or more TCBs a more rigorous regime than the one of the guidelines concerning the specification of the requirement, but not a laxer one.

Responses to questions in Consultation Paper EBA/CP/2025/17

Question 1. Do you consider the described requirements that capital endowment instruments should meet appropriate to ensure that they are available for use in the case of resolution of the TCB and for the purposes of the winding-up of the TCB? Is there any further requirement the EBA should consider adding? Or alternatively removing?

Treatment of assets (used to meet the capital endowment requirement) for liquidity purposes

Some respondents requested the assets held in escrow accounts to be treated as unencumbered for liquidity purposes. Two of them argued that the requirement to encumber assets, which would otherwise be defined as liquid, places a disproportionate burden on TCBs since: i) credit institutions established in the Union do not have such a requirement, ii) depositors of TCBs are already protected by the deposit guarantee scheme (DGS), and iii) TCBs are covered by group TLAC requirements.

The encumbrance is needed to ensure that such assets will be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the TCB and for the purposes of the winding-up in accordance with Article 48e(3) of the CRD. In addition, if the capital endowment assets are considered unencumbered for the purposes of Article 48f(1) of the CRD on the minimum liquidity requirement, that would imply that they might be unavailable to meet the objectives of the capital endowment requirement stated in Article 48e(3) of the CRD. This is in line with the ultimate objective of the capital endowment requirement, which envisages segregated assets to protect local depositors at the level of the TCB, or to remain available to pay appropriate claims and satisfy local creditors, in case of resolution or winding-up of the TCB. Indeed, if the assets were available for other purposes, such as meeting liquidity requirements, they

n/a

would be unlikely to be available in case of resolution or winding-up of the TCB.

Moreover, the liquidity requirements of Article 48f(1) of the CRD need to be met with unencumbered and liquid assets, while assets used to meet the capital endowment requirement and placed in an escrow account are, by nature, encumbered and therefore would not be available to meet the liquidity outflows of TCBs.

The aim of the capital endowment requirement is to provide an extra safeguard in case the home resolution or liquidation regimes of the TCB or its head undertaking fail to provide the adequate protection for local EU depositors and creditors, thus this requirement is irrespective of whether the TCB is covered by a DGS or by the group TLAC requirement.

Question 2. Do you consider the list of instruments proposed for the purposes of Article 48e(2)(c) of Directive 2013/36/EU adequate? Is there any further instrument the EBA should consider adding? Or alternatively removing?

Inclusion of Head Office guarantees in the list of eligible instruments and eligibility of covered bonds

One respondent suggested the inclusion of legally enforceable Head Office guarantees in the list of capital endowment instruments, arguing that, properly structured, such guarantees can ensure that any losses incurred by the branch are absorbed directly and immediately by parental resources. According to the respondent, this solution would provide protection that is more material, more immediate, and more proportionate than a segregated pool of low-yield assets.

Another respondent pointed out that covered bonds should be eligible instruments for the purposes of Article 48e of the CRD.

Head Office guarantees do not fit the purpose of the requirement since: i) the capital endowment instruments should be easily converted into cash in case of resolution or winding up of the TCB, which would not be possible in case of liquidity problems or insolvency or liquidation of the head office of the TCB, ii) the capital endowment instruments must be deposited in an escrow account, and this would not be possible for guarantees and iii) the failure of the TCB is expected to follow the failure of its head undertaking, therefore, the guarantee provided by this latter would not be able to absorb losses when needed.

It is recalled that capital endowment instruments shall be available to the TCB for unrestricted and immediate use to cover risks or losses as soon as those risks or losses occur. In this regard, the EBA's technical view is that, only instruments that would receive a 0% risk weight under the standardised approach for credit risk and that are not subject to haircuts under the LCR framework would ensure that the capital endowment is indeed readily available and can be easily monetised. Covered bonds, even if of high quality, do not meet these conditions. Therefore, competent authorities are encouraged to apply a strict approach with regard to the eligibility of these instruments.

n/a

The use in practice of non-EU government bonds to meet the capital endowment requirement

Some respondents argued that the current drafting may, in practice, preclude the use of non-EU government bonds in many cases due to the strict conditions under Article 114(7) of the CRR, particularly the requirement that the TCB shall be funded in the domestic currency of the issuing country. They requested, therefore, that the EBA clarifies in the guidelines that TCBs being part of the same legal entity as the head undertaking can be considered as funded in the domestic currency of the head undertaking. Two of these respondents also added that the TCB must demonstrate that its headquartered jurisdiction is equivalent, posing an extra burden on the entity.

The debt securities under letter c) of the list of capital endowment assets should be denominated in the same currency as the funding of the TCB according to Article 114(7) of the CRR. This means that TCBs should consider their own funding in order to determine if these assets are denominated and funded in the domestic currency as Article 114(7) of the CRR requests.

Finally, the list of jurisdictions for which the equivalence assessment was concluded positively is already provided by the Commission Implementing decision (EU) No 2021/1753, Annex IV.

A clarification has been added in the guidelines that TCBs should consider their own funding to determine if assets listed in paragraph 12 c) are denominated and funded in the domestic currency as Article 114(7) of the CRR requests.