

EBA/CP/2025/17

11 July 2025

Consultation Paper

Draft 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

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

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 10.10.2025. 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

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) 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 draft 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.

3. 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, 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, 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 a 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 under these guidelines 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 this Consultation Paper (CP) for the guidelines as mandated under Article 48e(4) of Directive 2013/36/EU. This consultation paper puts forward draft guidelines in relation to instruments under Article 48(2)(c) of Directive 2013/36/EU eliciting stakeholders' views on their design.

4. Guidelines

EBA/GL/20XX/XX

DD Month YYYY

Draft 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

1. 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/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.
4. Notifications will be published on the EBA website, in line with Article 16(3).

2. 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) 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation No 1093/2010.

3. Implementation

Date of application

10. These guidelines apply from 11 January 2027.

4. 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 15.
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) 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) 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) 575/2013;
 - e) Debt securities issued or guaranteed by the multilateral development banks listed in Article 117(2) of Regulation (EU) 575/2013;
 - f) Debt securities issued or guaranteed by international organisations listed in Article 118 of Regulation (EU) 575/2013;
13. The instruments referred to in paragraph 12 should be listed on a recognised exchange and be easily monetised at any time.
14. 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.

15. 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

16. 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) .../... [reference to the ITS on reporting for TCBs to be added].
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

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) 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 covered bonds and collateral from reverse repos.

High-quality covered bonds may be considered for the purposes of the capital endowment requirement, but their risk profile (they do not receive a 0% risk weight under the standardised approach for credit risk, and they are subject to haircuts under the LCR framework) could

constitute a possible impediment to their easy monetisation in case of the resolution and winding-up of the TCB.

Regarding the collateral received from reverse repos, concerns were raised with regards to their inclusion 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) 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 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 that of the CRR/CRD and decide to make use of the national discretion introduced by Article 48a(4) 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.

5.2 Overview of questions for consultation

Q1. 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?

Q2. 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?