

Consultation Response

EBA consultation on proposed Regulatory Technical Standards in the context of the booking arrangements that are to apply for the purposes of Article 48h of Directive 2013/36/EU

10 October 2025

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **European Banking Authority (EBA) consultation on proposed Regulatory Technical Standards in the context of the booking arrangements that are to apply for the purposes of Article 48h of Directive 2013/36/EU**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76. We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

We recognise the work the EBA has undertaken to determining booked and originated assets although clarification would be welcomed on some key issues. Legal certainty on these matters is a necessity, not only to achieve the intended harmonisation of requirements applicable to third country branches and to enable firms to meet those requirements, but also to ensure that the requirement in Article 48h(3) to prepare a reasoned legal opinion on the compliance with the requirements can be met.

AFME and its members would be happy to discuss any of the concerns raised in this response further, if helpful.

Question 1

Is the proposed distinction between the concepts of “assets and liabilities booked” and “assets and liabilities originated” sufficiently clear?

. The proposed distinction between the concepts of “assets and liabilities booked” and “assets and liabilities originated” lacks clarity in a number of significant areas.

Methodology for identifying booked and originated Items

The draft RTS does not provide a sufficiently clear or practical methodology for identifying when assets or liabilities are “booked” or “originated” by a TCB.

Under IFRS and other accounting frameworks, recognition of assets and liabilities is determined at the entity level, not at the branch or office level. There are no established rules for determining

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whether an asset or liability should be considered as booked by a particular branch. Defaulting to the accounting framework, does not give industry the certainty seemingly expected by the EBA in this area.

Risk of scoping the requirement too broadly

TCBs will be involved in the sale of products and services offered by the third country bank globally (for example foreign currency clearing). Given the requirement in Article 48h(1) that a TCB be able autonomously to manage assets and liabilities 'booked or originated' in the branch, a wide interpretation of the terms would leave authorised third country banks unable to deliver third country products and services needed by EU customers (eg payment services offered from head office).

Further, as the policy behind the article appears to be to enable the identification and risk management of the branch's activities it would appear disproportionate to include activities which do not give rise to risk for the branch.

Scope of the concept of "booked" assets and liabilities

Where a TCB has the authority to book a transaction directly to another entity (for example an affiliate) or to its head office (or another branch), that other entity or office is responsible for performance and bears the risks associated with the transaction. It would seem inconsistent with the purpose of the framework to treat such positions as booked to the branch. The references to "carried out" in recital 1 of the draft RTS indicates that such activities are out of scope, but clarification to this effect should appear in the substantive body of the RTS to eliminate any doubt.

Scope of the concept of "originated" assets and liabilities

Similarly, the definition of "originated" assets and liabilities in the draft RTS presumes that origination involves the transfer of risks or obligations initially assumed by the TCB. It would seem proportionate and in line with the policy driver behind the RTS of ensuring adequate oversight of the risks within the TCB, that only transactions for which the branch bears responsibility for performance should need to be accounted for. We would welcome clarification to this effect in the RTS.

The scope of the requirement in the RTS to record originated assets and liabilities would also benefit from clarification to appropriately align with the Level 1 text.

Article 48h(4)(b) of CRD VI mandates the EBA to develop technical standards for identifying and recording assets and liabilities originated by a third-country branch (TCB) and subsequently booked or held remotely in other branches or subsidiaries of the same group on half of or for the benefit of the originating TCB.

Article 2(1)(b) of the draft RTS defines "assets and liabilities originated" as those not recognised under the accounting framework due to the transfer of risks and rewards or obligations to "other entities", however. This language could be interpreted as extending the requirement to all transfers, including those to third parties outside the group, such as asset sales.

To avoid ambiguity and to ensure alignment with the Level 1 requirement, it is requested that the EBA clarify that this obligation is intended to apply only to assets and liabilities originated by the third-country branch and booked or held remotely within the same group.

Treatment of intra-entity transactions

Please also see the response to question 4.

Summary of issues

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The distinction between “assets and liabilities booked” and “assets and liabilities originated” as set out in the draft RTS merits further clarification. The EBA should:

- Provide a more practical methodology, or recognise that the accounting frameworks do not provide the methodology for, determining when an asset or liability should be considered as booked or originated by a TCB.
- Clarify that the requirement to record originated assets and liabilities applies only where the TCB continues to bear performance obligations and is limited to intragroup transfers, not to all transactions by a TCB.
- Reconsider the treatment of intra-entity transactions to ensure consistency with the policy intent and to avoid unintended regulatory consequences.

Greater clarity on these points would enhance the effectiveness and proportionality of the RTS and facilitate consistent implementation across the sector.

Question 2

Is the proposed concept of “off-balance sheet items” sufficiently clear?

Scope and definition concerns

The proposed concept of “off-balance sheet items”, as set out in Article 2(1)(c) of the draft RTS is not sufficiently clear and is overly broad. The current drafting could be interpreted to include activities of special purpose vehicles (SPVs) that are only indirectly related by one step to the TCB. For example, the requirement could be read as extending to lending by funds to which banks provide financing as part of leveraged finance transactions. This would go beyond the intended scope and impose unnecessary reporting obligations on TCBs.

To ensure proportionality and clarity, the EBA should refine the definition of “off-balance sheet items” to exclude activities that are not directly attributable to the TCB, such as those conducted by SPVs or funds in which the TCB has only an indirect interest. The RTS should also provide clear guidance on the criteria for determining when an off-balance sheet item falls within the TCB’s reporting perimeter, focusing on direct exposures and contingent liabilities arising from the TCB’s own activities.

Question 3

Do you have any comments on the proposed bookkeeping requirements under paragraph 3?

Proportionality

Whilst the desire for harmonisation is appreciated, we would welcome a broader use of proportionality in the application of the requirements.

Whilst we welcome the ability for TCBs to themselves determine the content, type and level of granularity of the information to be recorded in their registry book, there remain areas in which the draft RTS do not apply proportionately.

One example relates to Article 2, paragraph 3(a) which requires TCBs to establish, separately from their head undertaking, processes, systems, and procedures to ensure an accurate and timely tracking and recording of their activities. We are concerned that this requirement may unduly restrict branches from utilising group-wide systems and applications that are operated and managed independently.

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Whilst we acknowledge the need for processes and procedures to ensure an accurate and timely tracking and recording of the activities of the TCB, we would ask that the EBA remove the term “systems” from this provision. This would be in line with the EBA’s recognition in the consultation of the need to ensure proportionality and reduce implementation burden for TCBs, still allowing the national competent authority access to the information they require to supervise the TCB, without imposing unduly burdensome systems requirements.

Clarification of record-keeping obligations

Furthermore, we would appreciate further clarity in the RTS in relation to when a TCB is no longer required to record items in the registry book. This should include where a transfer of risks has occurred, and it is no longer possible for a branch to obtain data due to the transfer of risks and obligations. Clarification to this extent would provide practical guidance for TCBs and ensure that record-keeping requirements are proportionate and feasible.

Article 2(4) seeks to detail the duration of the obligation to record and track assets and liabilities originated and off-balance sheet items. For booked items, unless the scope of originated assets is appropriately limited to intra-group transfers (see our response to question 1), it would not be feasible to expect a TCB to obtain the relevant data after a transfer of risks and obligations to another entity.

Question 4

Do you agree with the proposed treatment of intragroup exposures, including intragroup funding from the head undertaking? Is the treatment of these exposures sufficiently clear?

Please see our response to Question 1, relating to where a TCB has the authority to book a transaction directly to another entity.

Treatment of intra-entity transactions

Article 2(2)(c) and recital 5 to the draft RTS suggest that 'intra-entity transactions' (i.e., 'transactions' between the TCB and other branches or offices of the same legal entity) should be treated as creating assets and liabilities of a TCB and recorded in the registry book. As transactions between different branches or offices of the same legal entity do not create assets or liabilities as such, we would query whether this is permitted by the mandate.

Further, the definition of origination refers to transfer to another entity, but not another branch within the same entity. On a literal interpretation, this would seem not to capture intra-entity risk transfers, which would appear to remain 'booked' to the branch notwithstanding risk transfer.

We would urge reassessment of the position regarding intra-entity transfers and transactions to ensure a proportionate assessment of risk within the TCB.

Question 5

Do you agree with the proposed treatment and measurement of assets and liabilities originated?

Please see our response to Question 1.

Valuation of assets and liabilities

Whilst TCBs are to monitor the value of assets and liabilities booked to the TCB for impairment, depreciation and amortisation, the value of assets and liabilities originated is to be measured at their outstanding nominal amount. Whilst we understand the distinction given the different risks associated, we are concerned that it could lead to an overinflation of the activities of the TCB and associated

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risks, with an unjust impact on the classification of the TCB and consequently the requirements applicable to such TCB.

We note also on this matter the requirements around record keeping, including information on the impairment and amortisation type, regardless of whether the asset or liability is booked or originated.

Question 6

Do you have any comments on the minimum content of the registry book proposed in Article 3?

Please see our response to Question 3.

Question 7

Do you have any comments on the approach proposed to provide information in the registry book on the risks associated to the assets, liabilities and off-balance sheet items, and how they are managed?

We do not consider the registry book to be the appropriate vehicle for recording information on risks. Instead, risk-related information should be addressed through established Home State risk management processes and incorporated into existing regulatory reporting frameworks, in coordination with supervisory authorities.

We suggest removing the requirement to record risk information in the registry book and instead rely on existing Home State risk management and reporting frameworks.

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