

# Position Paper

Comments on EBA/CP/2025/16

Draft Regulatory Technical Standards specifying  
the booking arrangements that third-country branches  
are to apply for the purposes of Article 48h of Directive 2013/36/EU

## General

Our Association represents international banks, investment firms and asset managers having business premises established in Germany, in the form of subsidiaries or branches. A significant number of our member institutions are currently licensed under the German third country branch framework and operate significant businesses under such license. They will in the future qualify as third country branches as defined and regulated by CRD VI. Therefore, the future regulatory framework is vitally important for our members.

Against this background, we would like to take the opportunity to comment on the draft Regulatory Technical Standards specifying the booking arrangements that third-country branches are to apply for the purposes of Article 48h of Directive 2013/36/EU (the “draft RTS”) as follows:

## Questions for consultation

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

We would ask the EBA to clarify that the scope of the requirement to record assets and liabilities originated just refers to intragroup transfers.

Art. 2 (1)(b) of the draft RTS refer to Article 48h (4)(b) of CRD VI, which states that the EBA shall develop regulatory technical standards to specify **“the methodology to identify and keep a record of off-balance-sheet items and of the assets and liabilities originated by the third-country branch and booked or held remotely in other branches or subsidiaries of the same group on behalf of or for the benefit of the originating third-country branch”**. However, we think that the text of the draft RTS (perhaps unintentionally?) makes this requirement wider and goes beyond the Level 1.

Draft Art. 2 (1)(b) defines assets and liabilities originated as **“assets and liabilities not recognised in accordance with the accounting framework due to the initial or subsequent full or partial transfer of risks and rewards or obligations to other entities”**. By only referring to “other entities”, this could be interpreted as applying to all transfers of assets and liabilities to third parties, including asset sales. The EBA should clarify that the transfer of assets and liabilities to

third parties outside the TCBs head undertaking or group subsidiaries does not trigger a requirement to record “assets and liabilities originated” in accordance with Art. 48h(4)(b) CRD VI.

Furthermore, the EBA should clarify in the draft RTS when a third country branch is no longer required to record “assets and liabilities originated” items in the registry book. This should include where a transfer of risks has occurred as well as a sale and it is no longer possible for a branch to obtain data subsequently due to the transfer of risks and obligations. **In our view, it would make most sense to record the status of the transferred assets at the time of transfer, but not to update their further development, which is beyond the control and knowledge of the TCB.**

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

We feel this is too broad and could potentially include activities of SPVs, which are considered one step removed. We would argue that this requirement should not include reporting on lending by funds that banks lend to as part of leveraged finance transactions.

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

The draft RTS should make it clear that they are to be applied proportionately to the size and complexity of third country branches. We are concerned that the requirements in draft Art. 2(3)(a) will restrict branches from using group-wide systems and applications where these are used and managed separately. The EBA should remove the word “systems” from this paragraph.

**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?**

No comment.

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

See answer to Q.1.

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

See answer to Q.1.

**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?**

A registry book should be a non-discretionary, very technical and universally comparable documentation as a part of bookkeeping. Registry book entries should be entered completely and correctly at the time of recording, but then remained unchanged indefinitely. So the registry book should clearly not be a comprehensive and “living” part of a risk management system and documentation. It is not the appropriate place to record information on risks because they fluctuate and change over time and would need frequent updates. Risks should be managed and

recorded as part of the usual risk management processes and regulatory reporting, in cooperation with and under review of supervisors.