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EBA final report and draft guidelines on the authorisation of third-country branches under Article 48c(8) of CRD VI

1. BACKGROUND

On 7 July 2026, the European Banking Authority ("EBA") published its Final Report containing the Draft Guidelines on the authorisation of third-country branches ("TCBs") in accordance with Article 48c(8) of Directive 2013/36/EU, as amended by Directive (EU) 2024/1619 (reference EBA/GL/2026/08) ("CRD VI").

The publication fulfils the legislative mandate assigned to the EBA to develop guidelines specifying, *inter alia*: (i) the information required for the authorisation application; (ii) the procedure and standard forms for authorisation; (iii) the conditions for granting authorisation; and (iv) the circumstances under which competent authorities may rely on information already submitted in prior authorisation procedures.

This regulatory development is part of a wider legislative reform that introduces, for the first time at EU level, a minimum harmonisation regime governing EU branches of third-country undertakings that intend to provide core banking services within a EU Member State.

2. THE NEW MINIMUM HARMONISATION REGIME FOR TCBs

The reformed CRD VI framework establishes a dedicated regime for TCBs intending to carry out core banking services within an EU Member State. Such services are identified as: (i) taking deposits or other repayable funds; (ii) lending; and (iii) the provision of guarantees and commitments.

To ensure proportionality, TCBs are classified into two categories:

Class 1 (higher risk profile): TCBs with total assets booked or originated equal to or greater than EUR 5 billion; TCBs that collect retail deposits exceeding 5% of total liabilities or EUR 50 million; TCBs whose head undertaking is established in a jurisdiction listed as high-risk from an AML/CFT perspective; or TCBs whose head undertaking is established in a non-equivalent jurisdiction from a prudential regulatory, supervisory or confidentiality standpoint.

Class 2: all TCBs not falling within the Class 1 criteria.

The regime applicable to Class 1 and Class 2 TCBs differs notably in respect of: internal governance requirements (including the possibility for competent authorities to require Class 1 TCBs to establish a local management committee), capital endowment thresholds, liquidity and reporting requirements, and supervisory practices.

The authorisation granted to a TCB has a strictly territorial scope: a TCB may only provide core banking services within the Member State where it has been authorised and does not benefit from EU passporting rights. Exceptions to this territorial limitation are limited to: (a) intragroup funding transactions concluded with other TCBs of the same head undertaking; and (b) services provided upon reverse solicitation, within the meaning of Article 21c of CRD VI.

3. THE GUIDELINES

Information Requirements and Application Content

The Guidelines (Part I) set out the information and documentation that the applicant head undertaking must submit to the competent authority. The application must cover two main areas:

- Information on the head undertaking and its group, including evidence of compliance with prudential requirements applicable in the third country and confirmation of good standing from an AML/CFT perspective. Given that a TCB has no separate legal personality from its head undertaking, information at both consolidated and individual level is required. A key element is the certificate of non-opposition issued by the third-country supervisory authority, which the competent authority must obtain — either directly from the applicant or via bilateral cooperation — before granting authorisation.
- Programme of operations, including a three-year business plan presented in both a baseline and a stress scenario. The business plan must cover all activities envisaged by the TCB and include financial and prudential forecasts on capital endowment and liquidity. Importantly, given that the TCB does not yet exist at the time of the application and no client solicitation can therefore have occurred, the financial forecasts must not include any planned activity based on reverse solicitation.

The Guidelines also address internal governance arrangements, emphasising that TCBs must not function as empty shells used solely to originate assets and liabilities to be booked in the head undertaking or other EU group entities. TCBs are required to record and manage autonomously all assets and liabilities booked or originated within the Member State. Specific provisions are dedicated to AML/CFT policies and procedures.

With respect to the reliance on previously submitted information, Part I of the Guidelines identifies the conditions under which a competent authority may exempt an applicant from resubmitting information already provided in a prior authorisation procedure, primarily concerning information relating to the head undertaking.

Assessment Methodology and Conditions for Authorisation

The conditions for granting authorisation (Part II) mirror the minimum requirements set out in Article 48c(4) of CRD VI, which require that: the TCB meets all applicable prudential requirements; the activities to be carried out in the EU Member State are covered by the head undertaking's home-country authorisation and are subject to supervision in that country; the competent authority is able to access all necessary information on the head undertaking; the TCB expressly restricts its activities to the territory of the authorising EU Member State (subject to the exceptions noted above); and there are no reasonable grounds to suspect the involvement of money laundering or terrorist financing.

The minimum grounds for refusal of authorisation include: failure to meet the requirements set out in Article 48c of CRD VI or national law; and failure by the head undertaking or its group to comply with applicable third-country prudential requirements, or reasonable grounds to suspect such non-compliance within the following 12 months.

Procedural Aspects

Part III of the Guidelines addresses the procedural elements of the authorisation process, seeking to balance the need for transparency to the applicant with the flexibility required by the cross-border nature of the procedure. The Guidelines provide for: a defined deadline for the assessment of the application; transparency obligations towards the applicant regarding the progress of the procedure; the competent authority's power to request additional information or clarifications; and specific provisions on cooperation with the third-country supervisory authority, the AML/CFT supervisor, and any other authority involved in the process.

In relation to cooperation with third-country authorities, the Guidelines underscore the importance of having Memoranda of Understanding (MoUs) in place to ensure a smooth flow of information. However, to avoid precluding market access pending the negotiation of an MoU, alternative cooperation arrangements may be used to the satisfaction of the competent authority.

Standard Forms and Templates

To facilitate the practical implementation of the regime, the Annexes to the Guidelines include: (a) a standard letter for the request of the non-opposition certificate to the third-country competent authority; (b) a standard letter for the submission of the application; and (c) a template for the provision of the information required in the application.

4. ENTRY INTO FORCE AND NEXT STEPS

The Guidelines will be translated into all official EU languages and published on the EBA website. Competent authorities will have two months from the publication of the translations to notify the EBA of their compliance or intention to comply with the Guidelines.

The Guidelines will apply from 11 January 2027, in line with the date of application of the overall new TCB regime introduced by the amended CRD VI. Existing TCBs established prior to that date will also be required to comply with the new minimum requirements from that date.

Institutions operating EU branches of third-country undertakings providing core banking services — or intending to do so — should carefully assess the impact of the new regime and the requirements introduced by the Guidelines in anticipation of the January 2027 deadline.

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