

EBA/CP/2021/23

7 June 2021

Consultation Paper

Draft Regulatory Technical Standards on the reclassification of investment firms as credit institutions in accordance with Article 8a (6)(b) of Directive 2013/36/EU

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1. Responding to this consultation

The EBA invites comments on proposals put forward in this paper and in particular on the specific questions summarised in Section 5.

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 17 July 2021. 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 (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

The Directive (EU) 2019/2034 (IFD) and Regulation (EU) 2019/2033 (IFR) give a significant number of mandates to the EBA covering a broad range of areas related to the prudential treatment of investment firms.

The implementation of the mandates is divided in four phases according to the legal deadline set out in the IFD/IFR for the draft regulatory technical standards (RTS). A comprehensive work plan for delivering all mandates is established in a Roadmap on Investment Firms Prudential Package which was published by the EBA on 2 May 2020¹.

These draft RTS have been developed in accordance with the principles laid down in the Investment Firms Roadmap:

- **Proportionality.** Ensuring proportionality with regard to the regulatory requirements aimed at investment firms of different sizes and complexity;
- **Non-disruptive transition.** Investment firms performing certain activities will be subject to the banking framework as of the IFR application date, whereas others may transition to the banking framework over time; therefore, the technical standards should provide for these transitions to occur without significant disruptions;
- **Level playing field.** Considerations should be given to the level playing field between investment firms and credit institutions, in particular regarding the net position risk, the trading counterparty default and the concentration of trading book positions, whereas recognising the specific risk structure and risk drivers of investment firms and investment firm groups;
- **Harmonization.** Further strengthening of a harmonised regulatory environment, in order to foster a level playing field across types and categories of investment firms.

The draft RTS included in this CP have been developed for the mandate related to the reclassification of certain investment firms to credit institutions in line with Article 8a(6)(b) of the CRD which requires the EBA to draft RTS on the calculation methodology related to the EUR 30 bn threshold for an investment firm to be required to apply for a credit institution authorisation.

These draft RTS cover a number of areas relevant for the implementation of this threshold, including the clarification of the notion of consolidated assets, the accounting standards for the determination of asset values, the procedure to calculate the total assets on a monthly basis, the treatment of assets of branches of third country groups.

This is the second public consultation for these draft RTS, as during the first public consultation it became clear that further consideration needed to be given to ensure a level playing field for firms, irrespective of where they are domiciled. The scope of the RTS has been amended, and further

¹[EBA Roadmap on investment firms](#)

considerations were given to the accounting standards to be used, as well as to the treatment of third country groups and branches thereof.

This Consultation Paper outlines the legislative basis and explains the policy choices underpinning the draft RTS. The EBA is of the view that the proposed regulatory requirements ensure a proportionate and technically consistent methodology for the calculation of level of total assets to be compared to the EUR 30 bn threshold.

The purpose of this Consultation Paper is to seek the view and useful insights of external stakeholders to make a better informed decision on which, if any, regulatory actions are needed to ensure that the prudential framework for investment firms mitigates risks and is proportional and not burdensome for the firms to implement. Stakeholders' input is sought through specific questions, which are summarized in Section 5.

The last section of this CP details initial cost-benefit and impact assessment analysis concerning the draft RTS in order to gather feedback on possible costs and benefits of the proposals and the relative scale of these costs and benefits for different stakeholders.

Next steps

The draft regulatory technical standards will be submitted to the Commission for endorsement following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union. The technical standards will apply 20 days after their publication in the Official Journal.

The analysis of the responses of this Consultation Paper will be communicated in due time in the form of a final report. It is planned for the EBA to submit the RTS in early Q4 2021.

3. Background and rationale

3.1 Background

1. Investment firms (IF) authorised under Directive 2014/65/EU (MiFID)² vary greatly in terms of size, business model, risk profile, complexity and interconnectedness, ranging from one-person companies to large internationally active groups. Currently, the prudential treatment of investment firms is set out in the Directive 2013/36/EU (CRD) and Regulation (EU) No 575/2013 (CRR). However, some investment firms are exempt from full CRD/CRR requirements depending on which services they provide, and their combination or size.
2. The IFD and the IFR, which were published in the Official Journal of the European Union on 5 December 2019 and entered into force on 26 December 2019, will replace the existing prudential framework for investment firms.
3. The EBA has published a Roadmap on Investment Firms Prudential Package, which details the EBA's strategy for delivering on the mandates, as well as the main principles it considered while delivering those mandates. More precisely:
 - a) The EBA is committed to ensuring proportionality with regard to the regulatory requirements aimed at IFs of different size and complexity, regarding it as a key aspect of the new regime.
 - b) Given the interlinkages between the CRR/CRD, on the one hand, and the IFR/IFD package on the other hand, the EBA technical standards should allow for transitions between the two frameworks without significant disruptions.
 - c) Nonetheless, the EBA recognises the specific risk structure and drivers of IFs and will therefore be particularly mindful of ensuring that the main risks to clients, market and the investment firms themselves are well covered.
4. This Consultation Paper covers a mandate developed under the first phase of the EBA roadmap focusing on the reclassification of investment firms as credit institutions. This is the second public consultation for these draft RTS³, as during the first public consultation it became clear that further consideration needed to be given to ensure a level playing field for firms, irrespective of where they are domiciled.
5. Furthermore, as the amendments brought to the present draft RTS require a new, albeit shorter, consultation period, it is clear that the adoption of this draft RTS will not take place in time for the date of application of the IFR/IFD regime (i.e. 26 June 2021). In this respect, while firms may begin the process for applying for an authorisation as a credit institution in line with Article 8a

² [EBA/Op/2015/20 Report on investment firms](#)

³ The first consultation paper, including these draft RTS was published on 4 June 2020 and can be found here: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20draft%20RTS%20on%20prudential%20requirements%20for%20Investment%20Firms/884615/EBA-CP-2020-06%20CP%20on%20draft%20RTS%20on%20prudential%20requirements%20for%20Investment%20Firms.pdf

of the CRD, firms may apply the provisions in Article 58 of the IFR until the authorisation is granted by the specific NCA. EBA will during the finalisation consider the application of the RTS in interaction with the IFR/IFD, within the legal mandate given to EBA, in order to ensure an orderly implementation.

6. Finally, the next section provides detailed explanations regarding the background and rationale of the draft RTS.

3.2 Draft RTS on the methodology for calculating the EUR 30bn threshold required to be authorised as a credit institution (Article 8a(6) point b) of the CRD)

7. Article 62 of the IFD introduces Article 8a of the CRD on the specific requirements for authorisation of a new type of credit institutions. In particular, investment firms that qualify as credit institutions pursuant to point (1)(b) of Article 4(1) of the CRR and have already obtained an authorisation pursuant to Title II of the MiFID are required to submit to the competent authority an application for authorisation as a credit institution when their total assets reach the EUR 30bn threshold.
8. The new provision differentiates the methods for the calculation of the threshold at individual and group level. At individual level, undertakings are required to submit the application at the latest on the day when the average of monthly total assets – calculated over a period of 12 consecutive months – is equal to or exceeds EUR 30bn. At group level, undertakings are still required to submit a credit institution application at the latest on the day when the average of monthly total assets – calculated over a period of 12 consecutive months – is less than EUR 30bn, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group – that individually have total assets of less than EUR 30bn and carry out any of the relevant activities – is equal to or exceeds EUR 30bn.
9. The EBA is mandated under Article 8a(6)(b) of the CRD to develop draft RTS to specify the methodology for calculating the thresholds referred to in paragraph 1 of the same article. This RTS provides clarity on all the areas that are deemed relevant in developing such a methodology, namely the definition of assets and the concept of consolidated assets, the calculation of assets' value, including the assets of relevant undertakings that are established outside the EU.
10. The present draft RTS guides investment firms looking to understand whether they should be applying for an authorisation as a credit institution in the calculation of the EUR 30bn threshold. It is important to highlight that, while assets of credit institutions, insofar as each credit institution complies with the relevant criteria (i.e. carrying out the services referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013), do count towards the EUR 30bn threshold, the actual calculation of the threshold should only be carried out by investment firms meeting all criteria in Article 8a of the the CRD (i.e. carrying out the services referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and have already obtained an authorisation

pursuant to Title II of Directive 2014/65/EU), as the calculating entities are the ones which will need to apply for a credit institution authorisation.

11. In order to identify those entities whose individual total assets are included in the calculation of the threshold, and following the comments received during the first consultation phase, the methodology has been amended, for the purposes of these RTS, in line with the notion of ‘group’ as specified in Article 4(1)(138) of the CRR, as well as in Article 3(1)(13) of Directive 2019/2034/EU and this provision is applied throughout the draft RTS. The wording used in these definitions is neutral with regards to geographical limitations, thus these RTS include relevant undertakings domiciled in the Union as well as in third countries. This would ensure a level playing field in terms of treatment of relevant undertakings of groups domiciled within the EU and relevant undertakings of groups domiciled outside the EU.
12. In light of the wording of the last subparagraph in Article 4(1)(1) of the CRR⁴, Article 7 of the present draft RTS provides clarifications with regards to the treatment of relevant branches authorised in the EU that are established by relevant undertakings domiciled in a third country, where the undertakings in the third country have a value of total assets larger than EUR 30 bn. Branches belonging to undertakings that have an individual value of total assets larger than EUR 30 bn, but whose value of consolidated assets (calculated as the individual value of total assets from which are deducted the intragroup exposures with all other relevant undertakings in the group) is smaller than EUR 30 bn are not in the scope of Article 7 of the current draft RTS. The policy measures remain unchanged in this regards as compared to the first consultation paper.
13. For the purposes of measuring the amount of assets to be compared with the threshold, these draft RTS acknowledge the different accounting standards applicable by investment firms and credit institutions and therefore adopts a hierarchical approach for the asset valuation. Hence, the draft legal text gives priority to the use of IFRS over EU local GAAPs, where the latter can only be used if the group does not use IFRS. It should however be noted that different accounting standards, in particular those not recognised in the EU, could determine different results in the calculation and therefore should not be applicable. Hence, non-EU local GAAPs-based values cannot be directly used for the purposes of these draft RTS: these values need to be adjusted in order to reflect either IFRS or an EU local GAAP to be used as inputs for the threshold calculation.
14. In providing further guidance on the calculation of the total value of ‘consolidated assets’, these draft RTS takes into account intragroup exposures in the following way: in the context of the solo test, all relevant intrgroup exposures (i.e. between the calculating undertaking and all other relevant undertakings in the group) are considered, while in the context of the group test only intragroup exposures between the calculating undertaking and relevant undertakings which have a total value of individual assets of less than EUR 30 bn or a value of consolidated assets (calculated as the individual value of total assets from which are deducted the intragroup

⁴ for the purposes of points (b)(ii) and (b)(iii), where the undertaking is part of a third-country group, the total assets of each branch of the third-country group authorised in the Union shall be included in the combined total value of the assets of all undertakings in the group;

exposures with all other relevant undertakings in the group) of less than EUR 30 bn are to be subtracted.

15. These draft RTS do not consider off-balance sheet items as part of the calculation of the total value of the assets as the IFR and the IFD do not require including those items in the total value of the assets.
16. Article 8a of the CRD requires undertakings to submit an application for an authorisation as a credit institution at the latest when the average of their monthly total assets is equal to or exceeds EUR 30bn over a period of 12 consecutive months. These draft RTS clarify that the calculations of the total value of the assets should be performed on a quarterly basis and that monthly data can be obtained by interpolation, allowing undertakings to work out the asset values four times per year. This approach is the most appropriate as Article 8a of CRD does not specifically require the calculation to be performed on a monthly basis. Furthermore, since the CRD does not indicate the time of the year when starting the calculation, the reference dates for the calculations are provided in the draft RTS, in line with the ones for the reporting requirements.

4. Draft RTS on the calculation of the threshold referred to in point (1)(b) of Article 4(1) CRR (Article 8a(6) point (b) of the CRD)

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

[...]

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council the European Parliament and of the Council with regard to regulatory technical standards for the methodology for calculating the threshold above which an investment firm is required to apply for a credit institution authorisation

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to [Directive xxxx/xx/xx]/[Regulation (..) No xx/xxxx] of the European Parliament and of the Council of dd/mm/yyyy on ...⁵, and in particular Article x[(y)] ... thereof [*provision conferring powers to the Commission*],

Whereas:

- (1) Under Article 8a of Directive 2013/36/EU, investment firms that qualify as credit institutions pursuant to point (1)(b) of Article 4(1) of Regulation (EU) No. 575/2013 – and have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU – are required to submit an application for authorisation to the competent authority for credit institutions when the total value of the consolidated assets is equal to or exceeds EUR 30 billion at solo or group level.
- (2) This Regulation provides a methodology for calculating the amount of total assets to be compared with the thresholds upon which investment firms under point (1)(b) of Article 4(1) of Regulation (EU) No. 575/2013 shall apply for an authorisation of credit institutions.
- (3) The notion of ‘group’ used in this Regulation relies on point (138) of Article 4(1) of Regulation (EU) No 575/2013 and point (13) of Article 3(1) of Directive 2019/2034/EU, which define ‘group’ in a broad manner as a parent undertaking and all its subsidiary undertakings, without a geographical characterisation of the group or regardless of the domicile of the undertakings within the group.
- (4) For the purposes of specifying the assets’ valuation, this Regulation takes into account the different accounting standards applicable to investment firms and credit

⁵ OJ.....

institutions and adopts a hierarchical approach consistent with Articles 50 and 51 of Regulation (EU) No 468/2014 (SSM Framework Regulation) providing for a methodology based on quantitative thresholds to assess the significance of credit institutions.

- (5) This Regulation acknowledges that a consistent definition of the exchange rate is necessary to ensure that those investment firms that do not report in euro can consistently perform the calculation laid down Article 8a of Directive 2013/36/EU.
- (6) The methodology for calculating the amount of total assets to be compared with the thresholds should take into account that the total value of the consolidated assets of all undertakings in a group which can potentially encompass intragroup exposures. While these elements are relevant from a prudential point of view, the methodology should be devised in such a manner to ensure that the amount of consolidated assets can be determined at group level.
- (7) In performing the calculation under Article 8a of Directive 2013/36/EU, investment firms that are part of third country groups shall include in the combined total value of the assets of all relevant entities in the group the total assets of the branches in the EU of relevant undertakings in third countries group, as indicated in the last subparagraph of Article 4(1)(1) of Regulation (EU) No 575/2013. The total value of assets of these third-country branches shall be calculated following the same principles of the statistical data reporting pursuant to Regulation (EU) 1071/2013 (ECB/2013/33) consistently with the treatment of credit institutions as per Article 8 of the Directive 2013/36/EU and the credit institutions as per Article 8a of the Directive 2013/36/EU.
- (8) The level one text refers to “monthly total assets” for the calculation of the total assets, which, although not explicitly stated, may suggest that the calculation is based on 12 monthly data points. However, a monthly calculation may be very burdensome in particular for complex groups, and it would not produce results substantially different from a calculation based on quarterly data. This would allow a quarterly calculation that, in turn, would require undertakings to work out the assets values four times per year, leading to a less burdensome implementation. Moreover, this reporting frequency is aligned with other provisions, in particular with the requirements in Article 55(5) of the IFR aimed at monitoring the size of an investment firm and with the reporting requirements of Article 54 of the IFR.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (10) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁶.

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Chapter 1

Scope and definitions

Article 1- Subject matter and scope

This Regulation specifies uniform rules for a methodology to calculate the thresholds referred to in Article 8a(1) of Directive 2013/36/EU, by identifying the definition of assets and calculation of assets' values.

Article 2 – Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'relevant undertaking' means any undertaking carrying out the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013;
2. 'group test' means the calculation as in point (b) of Article 8a(1) of Directive 2013/36/EU;
3. 'relevant activities' mean any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU;
4. 'relevant intragroup exposure' means exposures that occur between a relevant undertaking and other relevant undertakings, including adjustments resulting from the applicable accounting standards.

Chapter 2

Accounting standards and relevant exchange rate

Article 3 - Accounting standards and audited figures

1. For the purposes of this Regulation, the relevant undertaking, which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU, shall calculate the total value of the assets of all relevant undertakings in accordance with paragraphs 2 to 3.
2. The total value of the assets of this relevant undertaking and of all relevant undertakings shall be determined on the basis of the most recent audited annual accounts prepared in accordance with International Financial Reporting Standards (IFRS) as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.⁷
3. If those annual accounts prepared in accordance with IFRS in paragraph 2 of this Article are not available, the relevant undertaking shall determine the total value of assets on the basis of the annual accounts prepared in accordance with a Member State's applicable accounting standards.
4. For the purposes of paragraphs 2 and 3, where there are two or more relevant undertakings part of the same group, the total value of assets for all relevant undertakings shall be determined on the basis of the annual accounts prepared in accordance with IFRS or, where none of the relevant undertakings use IFRS, a single Member State's applicable accounting standards.
5. By derogation to paragraphs 2, 3 and 4, the total value of the assets of a relevant undertaking may be calculated on the basis of the annual accounts prepared in accordance with applicable accounting standards in third countries adjusted by the amounts leading to the same outcome of calculating the total assets using the methodology in paragraphs 2, 3 and 4.

⁷ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

Question for public consultation:

Question 1. Is there any further element (including any potential simplification) concerning the accounting standards to be used for the purposes of these draft RTS that should be considered in this article?

Article 4 – Relevant exchange rate

Relevant undertakings, which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU, shall perform the calculation laid down in this Regulation converting any amount into the undertaking's reporting currency at the spot exchange rate prevailing at the reporting reference date. Relevant undertakings which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU and which do not report in euro shall compare the result of that calculation with the threshold referred to in Article 8a(1) of Directive 2013/36/EU, converting the amount of total assets at the spot exchange rate prevailing at the reporting reference date.

Chapter 3

Calculation of the value of assets for determining the EUR 30 billion threshold

Article 5 – Calculation of total assets in accordance with Article 8a(1)(a) of Directive 2013/36/EU

1. All relevant undertakings shall determine the total value of assets at individual level in accordance with Article 3 of this Regulation.
2. The relevant undertaking which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU shall calculate the total value of assets at individual level in accordance with paragraphs 3 to 5 of this Article.
3. If the total value of assets at individual level is equal to or exceeds EUR 30 billion and the relevant undertaking which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU is not part of a group, this undertaking shall consider this amount as the total value of assets of the undertaking pursuant to Article 8a(1)(a) of Directive 2013/36/EU.
4. If the total value of assets at individual level is equal to or exceeds EUR 30 billion and the relevant undertaking which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU is part of a group, this relevant undertaking shall calculate the value of total assets pursuant to Article 8a(1)(a) of Directive 2013/36/EU by subtracting all relevant intragroup exposures.
5. If as a result of the calculation under paragraph 4 of this Article, the total value of the consolidated assets is more than EUR 30 billion and the undertaking is part of a group, the undertaking shall consider this amount as the total value of assets of the undertaking pursuant to Article 8a (1) (a) of Directive 2013/36 / EU.
6. If as a result of the calculation under paragraph 4 of this Article, the total value of the consolidated assets is less than EUR 30 billion and the undertaking is part of a group, the undertaking shall apply Article 6 of this Regulation.

Article 6 - Calculation of the total value of consolidated assets in accordance with Article 8a(1)(b) of Directive 2013/36/EU

1. The relevant undertakings which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU and have individual total assets of less than EUR 30 billion, as well as the undertakings referred to in paragraph 6 of Article 5 of the present Regulation shall calculate the total

value of the consolidated assets pursuant to Article 8a(1)(b) of Directive 2013/36/EU in accordance with paragraph 2 of this Article.

2. For the purposes of the calculation of the total value of consolidated assets, the following formula shall apply:

$$TCA = \sum_{i=1}^N (IA - RIE)_i + \sum_{j=1}^M CA_j$$

where:

TCA = the total value of the consolidated assets of relevant undertakings in the group pursuant to Article 8a(1)(b) of Directive 2013/36/EU;

i = a relevant undertaking with individual total assets of less than EUR 30 billion;

N = the number of relevant undertakings with individual total assets of less than EUR 30 billion;

IA = individual assets, as defined in Articles 3 and 4 of this Regulation, of a relevant undertaking with individual total assets of less than EUR 30 billion;

RIE = relevant intragroup exposures of the undertaking with individual total assets of less than EUR 30 billion towards other relevant undertakings with individual total assets of less than EUR 30 billion or towards those meeting the criteria in Article 5(6) of this Regulation;

j = a relevant undertaking meeting the criteria in Article 5(6) of this Regulation;

M = the number of relevant undertakings meeting the criteria in Article 5(6) of this Regulation;

CA = value of assets obtained by subtracting the intragroup exposures of the undertaking meeting the criteria in Article 5(6) of this Regulation towards all relevant undertakings in the group with individual total assets of less than EUR 30 billion and towards those meeting the criteria in Article 5(6) of this Regulation from the individual value of total assets of this relevant undertaking.

Article 7 - Calculation of combined assets of third country groups

1. For the purposes of this Article, a branch authorised in the EU shall be considered a relevant third country branch if it carries out any activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council and is established by a relevant undertaking in a third country which has individual total assets of more than EUR 30 billion, excluding those undertakings meeting the criteria in Article 5(6) of this Regulation.
2. Where the type of activities carried out by the relevant third country branch referred to in paragraph 1 is not identified, its total assets shall be considered for the purposes of the calculation of the combined total assets as if the branch were carrying out any activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council.
3. Assets of relevant third country branches shall be determined in line with the provisions regarding the statistical data reported pursuant to Regulation (EU) 1071/2013 (ECB/2013/33). For relevant third-country branches operating in non-euro area, the same provisions shall apply with reference to the national currency.
4. For the purposes of calculating the combined total value of the assets of all the undertakings of the group pursuant to the last subparagraph of Article 4(1)(1) of Regulation (EU) No 575/2013, the relevant undertaking which has already obtained an authorisation pursuant to Title II of Directive 2014/65/EU and is part of a third-country group, shall calculate the combined total value of the assets of all the relevant undertakings of the group by including the total assets of each relevant third-country branch referred to in paragraphs 1 and 2 as in the formula:

$$\text{Combined Assets} = TCA + \sum_{j=1}^N TA_{TCBj}$$

where:

Combined Assets = the combined total value of the assets of all relevant undertakings as defined in point (b) of Article 4(1)(1) of Regulation (EU) No 575/2013;

TCA = total value of the consolidated assets as defined in Article 6(2) of this Regulation;

TCBj = a relevant third-country branch *j* as referred to in paragraph 1 of this Article;

N = the number of relevant third-country branches *j*; and

TA = the value of total assets as defined in Article 7(3) of this Regulation.

Question for public consultation:

Question 2. This article is introduced to cover all possible cases envisaged in the definition of credit institution in point (1)(b) of paragraph 4(1) of the CRR (as amended by Article 62 of the IFR). Is there any other case that should be considered in clarifying the calculation methodology?

Article 8 - Average of monthly total assets calculation

1. The value of total assets shall be calculated in accordance with paragraphs 2 to 3 of this Article on the following reference dates: 31 March, 30 June, 30 September and 31 December.

2. For the purposes of Article 8a(1) of Directive 2013/36/EU, for each month in the quarter, the relevant undertaking shall calculate the monthly total assets as a linear interpolation between the value of the assets at the end of that quarter and the value of the assets at the end of the previous quarter as in the formula:

$$MTA_t = TA_{Q-1} + m * (TA_Q - TA_{Q-1})/3$$

where:

MTA_t = monthly total assets in month *t*;

m = one of the three months of quarter *Q* and it can assume the values 1, 2 or 3;

TA_Q = total consolidated assets calculated as in Article 5 or Article 6 of this Regulation, or, where relevant, total combined assets calculated as in Article 7 of this Regulation at the end of the quarter *Q* of month *t*; and

TA_{Q-1} = total consolidated assets calculated as in Article 5 or Article 6 of this Regulation, or, where relevant, total combined assets calculated as in Article 7 of this Regulation at the end of the previous quarter *Q-1* of month *t*.

3. The average of monthly total assets calculated over a period of 12 consecutive months shall be calculated as the average of *MTA_t* as defined in paragraph 1 of this Article over four consecutive quarters.

Question for public consultation:

Question 3. Based on the provisions included in Articles 5, 6 and 7 of the draft RTS, do you anticipate any operational issues concerning the calculation of consolidated or combined assets? Please provide concrete examples.

Article 9 – Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
[For the Commission
On behalf of the President

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

The EBA is mandated under Article 8a(6)(b) of the CRD to develop draft RTS to specify the methodology for calculating the thresholds referred to in paragraph 1 of the same article, related to the authorisation of credit institutions.

Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation) provides that any RTS developed by the EBA should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options’.

This section presents the cost-benefit analysis of the main policy provisions included in the draft RTS that are described in this CP. The analysis is high level and qualitative nature. In parallel with the consultation, the EBA is launching a data collection to assess the impact of the provisions proposed in these draft RTS.

A. Problem identification

Currently, the prudential treatment of investment firms is set out in the CRD and the CRR. This framework is largely based on the Basel standards, which have been designed for credit institutions. The IFD and the IFR will replace the existing prudential framework for investment firms, with the aim to address the specific risks inherent to the activities of investment firms.

However, some investment firms provide ‘bank-like’ services and activities and in a sense pose similar risk as those of credit institutions. Furthermore, systemic investment firms can be large enough to represent a threat to financial stability like significant credit institutions.

To account for these risks, the new framework includes certain types of investment firms in the definition of a credit institution, which will remain subject to the CRD/CRR. The new definition covers investment firms that carry out the MiFID services and activities (3) dealing on own account and/or (6) underwriting/placing of financial instruments on a firm commitment basis, for which their consolidated assets is equal to or exceeds EUR 30 billion threshold either at individual or group level.

The calculation of these thresholds is a key in determining which investment firms will become a credit institutions and be subject to the CRR/CRD. However, the CRR and CRD do not provide any specific guidance on how to calculate these thresholds. Consequently, Article 8a(6)(b) of the CRD requests EBA to develop a methodology for calculating these thresholds at individual and group level. The lack of a common methodology would result in an inconsistent identification of credit institutions across the EU.

B. Policy objectives

The specific objective of these draft RTS is to establish a harmonised methodology for calculating the thresholds over which an investment firm has to apply for an authorisation as a credit institution. In particular, these draft RTS aim to supplement at a technical level the provisions of the IFD/IFR/CRR/CRD and contribute in achieving legal clarity.

Generally, the RTS aim to create a level playing field by setting common requirements for the prudential categorisation of investment firms across the EU. Overall, the draft RTS are expected to promote the effective and efficient functioning of the EU's investment firm sector.

C. Baseline scenario

The baseline scenario is the scenario against which the impact is assessed. The baseline scenario is the current situation, where investment firms are subject to the CRD/CRR requirements, as well as the current RTS thereof.

Currently, the prudential framework applied to investment firms depends on the firm's categorisation within the CRD/CRR framework. This categorisation is primarily determined by the MiFID investment services and activities the firm offers and undertakes, as well as its ability to hold money and securities belonging to its clients. The 2015 EBA Report on investment firms identified at least 11 different prudential categories, ranging from no capital requirements to the application of the full CRD/CRR.

D. Options considered, Cost-Benefit Analysis and Preferred option

Calculation of total value of assets

For the purposes of calculating the thresholds at group level, the relevant undertaking which has already obtained a MiFID authorisation shall calculate the total value of the assets of all the relevant undertakings in the scope of the group using the most recent audited annual accounts. However, these relevant undertakings can be located in different countries and follow different accounting standards. The EBA has considered the following options to determine the total value of the assets:

Option 1a: Determine the total value of assets based on the accounting standards followed by each relevant undertaking.

Option 1b: Calculate the total value of assets based on International Financial Reporting Standards (IFRS) or, if those are not available, based on a Member State's applicable accounting laws. Where the group contains two or more relevant undertakings, the total value of assets for all relevant undertakings in the group should be determined based on one Member State's applicable accounting laws.

Under Option 1a the total value of assets of each relevant undertaking will be determined on the basis of the annual accounts prepared in accordance with the applicable accounting laws followed by the relevant undertaking in question. These can be the International Financial Reporting Standards (IFRS), a Member State's applicable accounting laws or a third country's applicable accounting laws. While this option can be less burdensome for firms, as they can calculate the total value of assets directly from their annual accounts, it can be problematic when aggregating the value of these assets across different firms which use different accounting standards. In particular, the definition and valuation of total assets may diverge between accounting standards, which can render the value of total assets incomparable across firms using different accounting standards.

Option 1b solves this issue, by requiring the value of total assets to be based on a single accounting standard, either the IFRS or a Member State's applicable accounting laws. However, it is a more burdensome option as it requires some effort from the relevant undertakings to recalculate the value of their total assets based on the chosen accounting standards for the purpose of the threshold calculation. In order to alleviate this burden, under this option, the firms are allowed to use the value of their total assets calculated based on the applicable accounting laws and adjust it by an amount that would result in the same outcome as if they calculated this value under the chosen accounting standards for the purpose of the threshold calculation.

Option 1b is retained.

Intragroup exposures and other consolidation adjustments

When an investment firm is part of a group, the RTS prescribes that the total value of the consolidated assets is calculated as follows:

- a) For the purpose of Article 8a(1)(a) of the CRD, as the total value of the individual assets, adjusted for intragroup exposures, including adjustments based on the applicable accounting standards;
- b) For the purpose of Article 8a(1)(b) of the CRD, as the sum over all entities within the scope of the group test of the total value of the individual assets adjusted for intragroup exposures, including adjustments based on the applicable accounting standards.

The EBA has considered two interpretations of intragroup exposures.

Option 2a: Narrow interpretation of intragroup exposures

Option 2b: Broad interpretation of intragroup exposures

Option 2a considers as intragroup exposures only those exposures that are among relevant undertakings, i.e. relevant intragroup exposures. In particular, under the solo test, all relevant intragroup exposures are considered, whereas under the group test, the relevant intragroup exposures to be considered are those among the relevant undertakings that fall in scope of the group test and other relevant undertakings with individual total assets of less than EUR 30 billion. This option aims to avoid double counting of assets.

Under Option 2b, all exposures among entities within the group would be considered as intragroup exposures. These includes exposures with entities that are in the group but are not relevant undertakings. This option aims to isolate the contribution of each individual relevant undertaking to the group figures.

Option 2a is consistent with rest of the methodology by only considering relevant undertakings. It can reduce arbitrage opportunities where intragroup exposures among non-relevant undertakings are artificially inflated to reduce the threshold. However, it requires counterparty-by-counterparty intragroup figures, which may not be readily available. On the other hand, the notion of intragroup exposures under Option 2b is in line with other pieces of regulation (e.g. CRR) where the term intragroup refers to all exposures among undertakings belonging to the same group. However, there is the potential risk of overcorrection due to intragroup exposures, reducing the total assets to an undesirable level.

Option 2a has been retained.

5.2 Overview of questions for consultation

- Question 1.** Is there any further element (including any potential simplification) concerning the accounting standards to be used for the purposes of these draft RTS that should be considered in this article?
- Question 2.** This article is introduced to cover all possible cases envisaged in the definition of credit institution in point (1)(b) of paragraph 4(1) of the CRR (as amended by Article 62 of the IFR). Is there any other case that should be considered in clarifying the calculation methodology?
- Question 3.** Based on the provisions included in Articles 5, 6 and 7 of the draft RTS, do you anticipate any operational issues concerning the calculation of consolidated or combined assets? Please provide concrete examples.