

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 55(5) of Regulation (EU) 2019/2033 (‘the Regulation’) empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts to specify the obligation to provide information to the relevant competent authorities in order to allow the effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU.  The mandate requires the EBA ‘to specify further the obligation to provide information’ in order to allow 'an ‘effective monitoring’ of the EUR 30 billion threshold', it is understood that this is best achieved if competent authorities have access to the necessary information to compute the above-mentioned threshold themselves. Consequently, a reporting template is needed for the investment firms to fill in, and the reporting requirement should become an integral part of the rest of the reporting framework.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 55(5) of the Regulation. A consultation paper was published on the EBA internet site on 4 June 2020, and the consultation closed on 4 September 2020. Moreover, the EBA worked in consultation with European Securities and Markets Authority (ESMA), invited the EBA’s Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Based on the feedback received during this consultation, as well as in order to reflect the methodology set out in the draft technical standards on the reclassification of investment firms as credit institutions, prepared by the EBA in accordance with Article 8a(6), point (b) of Directive 2013/36/EU as amended by Directive (EU) 2019/2034, amendments were brought to the draft technical standards.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission.This analysis is available at [Implementing Technical Standards on reporting and disclosures requirements for investment firms | European Banking Authority (europa.eu)](https://www.eba.europa.eu/regulation-and-policy/supervisory-reporting/technical-standards-reporting-and-disclosures-requirements-investment-firms#pane-new-7bdd87fb-e02f-492a-99d6-129449e3cf9d), pages 13-17 of the Final Draft Regulatory Technical Standards.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft technical standards specify the uniform reporting templates and accompanying instructions, the frequency and dates of reporting as well as definitions for the IT solutions for the reporting of information to competent authorities in accordance with Article 55(1) and (2) of the Regulation.

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to provide information to the relevant competent authorities in order to allow effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements for investment firms and amending Regulation (EU) No 1093/2010, Regulation (EU) No 575/2013, Regulation (EU) No 806/2014 and in particular Article 55(5), third sub-paragraph thereof,

Whereas:

1. The obligation to provide information to the relevant competent authorities, for the purposes of an effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU[[1]](#footnote-1), should be further specified in regulatory technical standards. Those technical standards should introduce a coherent reporting framework established on the basis of a harmonised set of standards. Furthermore, it is appropriate to specify, on the basis of Article 55 of Regulation (EU) No 2019/2033, the modalities according to which investment firms are required to report information for the ongoing monitoring of the thresholds referred to in that Article.
2. The technical standards, with a view to allowing an effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU, should be closely aligned with the methodology for the calculation of those thresholds as specified in [*Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU*]. In particular, the total assets of all relevant undertakings as well as branches in the EU of third country groups that perform relevant activities should be reported in order to allow the competent authority to assess both an individual entity’s position in relation to the thresholds and the calculation of the consolidated total assets reflecting the position of a group supervised on a consolidated basis.
3. The information for the effective monitoring of the threshold set out in point (a) of Article 8a(1) of Directive 2013/36/EU should be reported by each and every relevant undertaking defined in Regulation … [*Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU*]. The information for the effective monitoring of the threshold set out in point (b) of Article 8a(1) of Directive 2013/36/EU should and can be reported by every relevant undertaking included in the group test of Article 6 and, where applicable, Article 7 of Regulation … [*Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU*] in the light of the data exchange requirements specified in Article 55(2) of Regulation (EU) 2019/2033.
4. This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
5. EBA has conducted open public consultations on the draft implementing 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 1093/2010[[2]](#footnote-2).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation specifies the obligation to provide information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 by laying down uniform reporting formats and templates, instructions and methodology on how to use those templates, the frequency and dates of such reporting.

Article 2

Definitions

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

(1) ‘relevant undertaking’ means a relevant undertaking as defined in Article 2, point (1) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*.

(2) ‘relevant third country branch’ means a relevant third country branch as referred to in Article 7(1) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU].*

Article 3

Reporting reference dates

Relevant undertakings shall submit the information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 with a quarterly frequency as this information stands on 31 March, 30 June, 30 September and 31 December.

Where relevant undertakings are permitted by national laws to report their financial information based on their accounting year-end which deviates from the calendar year-end, the reporting reference dates may be adjusted accordingly, so that reporting of information is done every three, six, nine or twelve months from their accounting year-end, respectively.

Article 4

Reporting remittance dates

Relevant undertakings shall submit the information referred to in paragraphs 1 and 2 of Article 55 of Regulation (EU) 2019/2033 by close of business on the following remittance dates: 12 May, 11 August, 11 November and 11 February.

If the remittance date is a public holiday in the Member State of the competent authority to which the report is to be provided, or a Saturday or a Sunday, data shall be submitted on the following working day.

Where the relevant undertakings report their information using adjusted reporting reference dates based on their accounting year-end as set out in Article 2(2) of this Regulation, the remittance dates may also be adjusted accordingly so that the same remittance period from the adjusted reporting reference date is maintained.

4. Relevant undertakings may submit unaudited figures. Where audited figures deviate from submitted unaudited figures, the revised, audited figures shall be submitted without undue delay. Unaudited figures are figures that have not received an external auditor's opinion whereas audited figures are figures audited by an external auditor expressing an audit opinion.

5. Corrections to the submitted reports shall be submitted to the competent authorities without undue delay.

Article 5

Format and frequency of reporting

1. Relevant undertakings shall report the information specified in this Article, where they are subject to an obligation to provide information to competent authorities in accordance with paragraph (1) or (2) of Article 55 of Regulation (EU) 2019/2033, with a quarterly frequency.

2. Relevant undertakings shall report the information set out in template I 10.01 of Annex I in accordance with the instructions of Annex II.

3. Relevant undertakings shall report the information set out in template I 10.02 of Annex I in accordance with the instructions of Annex II, where both of the following conditions are met:

(i) the relevant undertakings have individual total assets of less than EUR 30 billion or are undertakings referred to in Article 5(6) of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*;

(ii) the relevant undertakings are part of a group and that group includes at least one other relevant undertaking or relevant third country branch whose assets have to be included in the calculation in accordance with Articles 6 and 7 of *[the Draft RTS prepared in accordance with Article 8a(6), point (b) of Directive 2013/36/EU]*.

Article 6

Data precision and information associated with submissions

1. Relevant undertakings shall submit the information in the data exchange formats and representations specified by the competent authorities and respecting the data point definition of the data point model and the validation rules referred to in Annex III as well as the following specifications:

(a) Information that is not required or not applicable shall not be included in a data submission.

(b) Numerical values shall be submitted as follows:

(i) data points with the data type ‘Monetary’ shall be reported using a minimum precision equivalent to thousands of units;

(ii) data points with the data type ‘Percentage’ shall be expressed as per unit with a minimum precision equivalent to four decimals;

(iii) data points with the data type ‘Integer’ shall be reported using no decimals and a precision equivalent to units.

(c) Investment firms and credit institutions shall be identified solely by their Legal Entity Identifier (LEI).

(d) Legal entities and counterparties other than investment firms and credit institutions shall be identified by their LEI where available.

2. Relevant undertakings shall accompany the submitted data with the following information:

(a) reporting reference date and reference period;

(b) reporting currency;

(c) accounting standard;

(d) Legal Entity Identifier (LEI) of the relevant undertaking;

(e) scope of consolidation.

Article 7

ANNEXES

*Please see separate files*

Annex I – Templates for the reporting for threshold monitoring purposes

Annex II – Instructions for the reporting for threshold monitoring purposes

Annex III – Validation rules and DPM

Article 8

Final provisions

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

1. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and Directive 2006/49/EC, OJ L 176, 27.6.2013, p. 338. [↑](#footnote-ref-1)
2. 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, 15.12.2020, p. 12). [↑](#footnote-ref-2)