

EBA/RTS/2021/17

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20 December 2021

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## Final report

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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. Executive Summary

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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 into 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 2020.

Article 62 (6) of the Investment Firms Directive (IFD) amends the Capital Requirements Directive (CRD) by introducing Article 8a regarding specific requirements for authorisation of certain credit institutions (i.e., credit institutions referred to in point 1(b) of Article 4(1) of the Capital Requirements Regulation (CRR)). In point 8a(6)(b) of the CRD, the EBA is mandated to develop draft RTS to specify the methodology for calculating the thresholds referred to in paragraph 1 of Article 8a of the CRD.

This final report details the policy considerations and the decisions made during the finalisation of these final draft RTS, as well as the outcome of the two public consultations that these draft RTS have been subject to. In particular, these draft RTS cover areas relevant for the calculation and implementation of the EUR 30 bn threshold, including the accounting standards for the determination of asset values, the methodology for implementing the solo and the group test, as well as the procedure to calculate the total assets on a monthly basis and the treatment of assets belonging to European branches of third-country groups.

Particular consideration has been given to the scope and corresponding methodology for the calculation of the total assets to be compared with the EUR 30 bn threshold and these draft RTS have undergone subsequent amendments to enhance the comparability of treatment for all undertakings relevant for the threshold in accordance with the regulatory framework. Feedback provided to the EBA during the first consultation on these RTS highlighted that further consideration needed to be given to ensure a level playing field for firms, irrespective of where they are domiciled. As a consequence, the scope of the calculation in these final draft RTS was revised to also include non-EU assets of non-EU groups, thus ensuring that the draft RTS put forward a proportionate and technically consistent methodology for the calculation of the level of total assets to be compared to the EUR 30 bn threshold. Finally, adjustments were made to clarify the accounting standards to be used, as well as to further specify the treatment of third-country groups and branches thereof.

In parallel with the second public consultations, a data collection exercise was carried out with the competent authorities to identify those firms that would fall under the scope of the draft RTS. From a population of 443 firms authorised in the EU to carry out the relevant activities, only 29 were considered by their competent authorities as relevant for the data collection exercise, while only 19 are identified as breaching one of the two thresholds in Article 8a of the CRD. With this exercise,

the EBA aimed at evaluating the implications that the global scope of the draft RTS would have on both investment firms as well as NCAs. Nonetheless, the results do not distinguish between firms which would meet the threshold under all circumstances and firms for which the EUR 30 bn threshold cannot be determined without the guidance provided in the draft RTS.

#### 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. It is planned for the EBA to submit the RTS in early Q4 2021.

## 2. Background and rationale

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### 2.1 Background

1. **A new European regulatory framework for investment firms:** Investment firms (IF) authorised under Directive 2014/65/EU (MiFID)<sup>1</sup> vary greatly in terms of size, business model, risk profile, complexity and interconnectedness, ranging from one-person companies to large internationally active groups. The IFD and the IFR were published in the Official Journal of the European Union on 5 December 2019 and are applicable since 26 June 2021, replacing the previous prudential framework for investment firms.
2. **The EBA has structured the work for delivering on the mandates received in the context of the new regulatory framework for IFs:** 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.
3. **This Report discusses a mandate related to the reclassification of IFs as credit institutions and has gone through two public consultation phases:** This Final Report covers a mandate developed under the first phase of the EBA roadmap focusing on the reclassification of investment firms as credit institutions. During the first public consultation phase, which ended on 4 September 2020, it appeared as necessary that further consideration should be given to the scope of the entities to be included in the calculation of the threshold in order to ensure a level playing field for firms, irrespective of their domiciliation. Thus, another public consultation ensued, and this document also presents the outcome of this second public consultation on these draft RTS<sup>2</sup>.
4. **The EBA took steps to provide clarity to national competent authorities with regards to appropriate supervisory and enforcement practices while the adoption of the present draft RTS is pending:** Furthermore, as the amendments brought to the present draft RTS required a

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<sup>1</sup> [EBA/Op/2015/20 Report on investment firms](#)

<sup>2</sup> 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](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)

second consultation period, the adoption of these draft RTS could not take place in time for the date of application of the IFR and IFD (26 June 2021). In this respect, the EBA published an Opinion<sup>3</sup> to ease the implementation of the IFR/IFD framework and advised competent authorities (CAs) to apply a pragmatic approach where the EUR 30bn threshold cannot be determined without the guidance in the draft RTS (i.e. CAs should not prioritise any supervisory or enforcement action in relation to the identification of those firms requiring re-authorisation until 6 months after the final methodology is in place). This EBA Opinion accompanied a statement from the European Commission clarifying that firms which need to obtain authorisation as a credit institution will continue to be subject to the CRR/CRD rules as they stood on the day prior to the date of application of the new framework, in accordance with Article 58 of the IFR, during the short period until they are granted authorisation by their competent authorities.

5. The next section provides detailed explanations regarding the background and rationale of the draft RTS.

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

6. **Certain investment firms should apply for a credit institution authorisation:** Article 62 of the IFD introduces Article 8a of the CRD on the specific requirements for authorisation of a new type of credit institution. Investment firms that qualify as credit institutions pursuant to point (1)(b) of Article 4(1) of the CRR and have already obtained 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 30 bn threshold.
7. **The mandate granted to the EBA deals with the methodology for the calculation of the EUR 30 bn threshold:** 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.
8. **Only investment firms authorised in the EU should carry out the threshold calculation:** 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 30 bn threshold, the actual calculation of the threshold should only be carried out by investment firms meeting all criteria in Article 8a of 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 authorisation pursuant to Title

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<sup>3</sup> <https://www.eba.europa.eu/eba-provides-clarification-implementation-new-prudential-regime-investment-firms>

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

9. **Calculation of the threshold should be carried out at individual level and at group level:** The present draft RTS guides investment firms looking to understand whether they should be applying for authorisation as a credit institution in the calculation of the EUR 30 bn threshold. 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 30 bn. 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 30 bn, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group – that have total assets of less than EUR 30 bn individually and carry out any of the relevant activities – is equal to or exceeds EUR 30 bn.
10. **The scope of undertakings whose assets should be taken into account in the EUR 30 bn threshold calculation at group level includes all undertakings belonging to the group, that carry out the relevant services and have individual total assets of less than EUR 30 bn:** 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 public consultation whereby the initially proposed provisions in the RTS resulted in an unequal treatment of undertakings belonging to EU vs non-EU groups, the methodology has been amended 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, for the purposes of these RTS, 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.
11. **Branches established in the EU should be considered in the calculation of the EUR 30 bn threshold if they belong to relevant undertakings established in third countries and these relevant undertakings have individual total assets of less than EUR 30 bn:** In light of the wording of the last subparagraph in Article 4(1)(1) of the CRR<sup>4</sup>, and in line with the definition of ‘group’ used throughout the draft RTS, Article 7 of the present draft RTS provides clarifications with regard 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. The assets of these branches are to be added to the value of consolidated assets for the relevant undertakings in the group. 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

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<sup>4</sup> 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;

which are deducted the intragroup exposures with all other relevant undertakings in the group) is smaller than EUR 30 bn are not within the scope of Article 7 of the current draft RTS.

12. **Intragroup exposures should be subtracted from the value of total individual assets, but the treatment is different when the threshold is calculated at individual or at group level:** 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 intragroup 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 exposures with all other relevant undertakings in the group) of less than EUR 30 bn are to be subtracted. 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 such inclusion.
13. **Preference is given, in terms of accounting standards, to IFRS or EU local GAAPs:** 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. **Precisions with regards to the calculation of the total assets ‘on a monthly basis’:** Article 8a of the CRD requires undertakings to submit an application for an authorisation as 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.



### 3. 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)

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

of **XXX**

[...]

### **supplementing Regulation (EU) No 575/2013 of 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 ....<sup>5</sup>, 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 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 authorisation as a credit institution.
- (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 institutions and adopts a hierarchical approach consistent with Articles 50 and 51 of Regulation (EU) No 468/2014 (SSM Framework Regulation) providing for a

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<sup>5</sup> OJ.....

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 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 as 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-country groups, 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) consistent with the treatment of credit institutions as per Article 8 of Directive 2013/36/EU and credit institutions as per Article 8a of 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) The 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.

HAS ADOPTED THIS REGULATION:

## **Chapter 1**

### **Scope and definitions**

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<sup>6</sup> 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).

### *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 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.<sup>7</sup>
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.

#### *Article 4 – Relevant exchange rate*

Relevant undertakings, which have already obtained 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 authorisation pursuant to Title II of Directive 2014/65/EU and which do not report in euro shall compare the result of that calculation

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<sup>7</sup> 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).

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 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 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 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 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 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.

### *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.

### *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]*



## 4. Accompanying documents

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### 4.1 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 as well as the results of the data collection to assess its impact.

#### 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 risks 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 the EUR 30 bn threshold either at individual or group level.

The calculation of these thresholds is a key in determining which investment firms will become 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 the EBA to develop a methodology for calculating these thresholds at individual and group levels. 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 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 to 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.<sup>8</sup>

## 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 within 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.**

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<sup>8</sup> <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/983359/0bd8f11e-4a5e-4e33-ad13-d9dbe23ea1af/EBA-Op-2015-20%20Report%20on%20investment%20firms.pdf?retry=1>

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 accounting 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 within the scope

of the group test and other relevant undertakings with individual total assets of less than EUR 30 bn. 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 include 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.

#### Data collection exercise: Sample and results

The EBA has conducted a data collection exercise with the competent authorities to assess the impact of these draft RTS. The scope of the data collection covered all EEA investment firms that:

- (a) are authorised and supervised under Directive 2014/65/EU<sup>9</sup>;
- (b) carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU (MiFID);
- (c) are not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking; and
- (d) meet one of the thresholds referred to in Article 8a(1) of the CRD, at individual or group level, based on the draft RTS on EUR 30 bn threshold methodology.

Competent authorities were allowed to expand the scope of the data collection in their jurisdiction to cover investment firms meeting all the conditions in points (a) to (c), irrespective of whether they meet any of the thresholds specified in point (d) above. The reference date for the reporting data is 31 December 2020.<sup>10</sup>

Out of the 30 EEA countries, 2 countries submitted data only for investment firms meeting all the conditions in points (a) to (d), 4 countries submitted data on an expanded scope (i.e. including additional investment firms that did not meet one of the thresholds specified in point (d)), whereas

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<sup>9</sup> Undertakings that are currently authorised as credit institutions (i.e. hold both investment firm and banking licenses) should be excluded from the scope of the data collection.

<sup>10</sup> For a limited number of investment firms the data are reported based on a more recent date..

24 countries confirmed that they do not have any investment firms in their jurisdiction meeting all the conditions in points (a) to (d) and have not expanded the scope of the data collection further.

The resulting sample includes 29 investment firms, of which all submitted data of sufficient quality to be considered for the analysis: <sup>11</sup>

Table 1: Number of investment firms participating in the data collection

Country	Number of participating investment firms	Of which: Number of investment firms with data of sufficient quality
<b>Total</b>	29	29

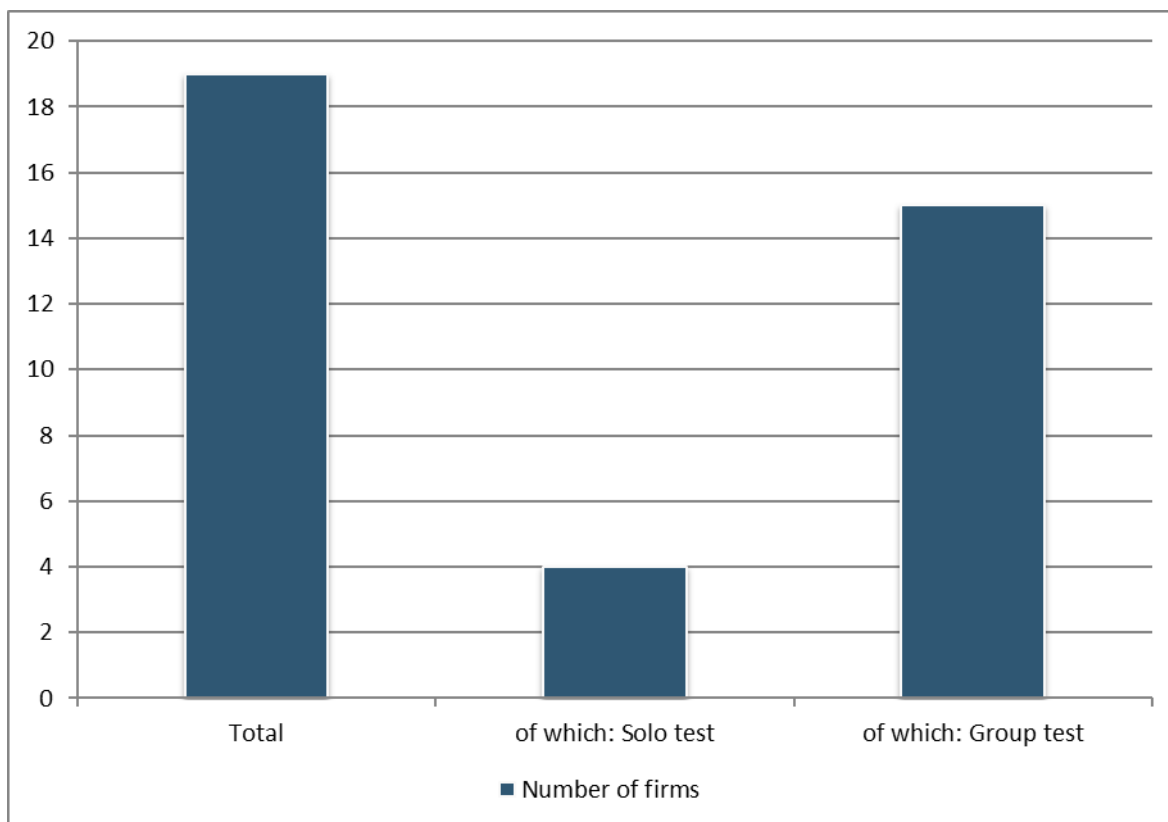
Sources: 2021 EBA data collection for Draft RTS on EUR 30 bn threshold methodology and EBA calculations.

According to Figure 1, 19 firms in the EEA meet one of the thresholds referred to in Article 8a(1) of the CRD. The majority of them (15) exceeds the threshold at group level, while only 4 exceed the threshold at individual level. Overall, this constitutes a small share of the total number of investment firms in the EEA, which as of 31 December 2019, stood at 2537, of which 443 were authorised to carry out MiFID activities (3) and/or (6) and not classified as commodity and emission dealers. <sup>12</sup>

<sup>11</sup> To be considered for the analysis, participating firms are required to submit, as a minimum, the necessary information to assess if they meet one of the thresholds referred to in Article 8a(1) of the CRD, at individual or group level, based on the present draft RTS.

<sup>12</sup> Data are based on the 2020 EBA data collection on the population of investment firms.

Figure 1: Number of firms meeting one of the thresholds referred to in Article 8a(1) of the CRD, by type of threshold test

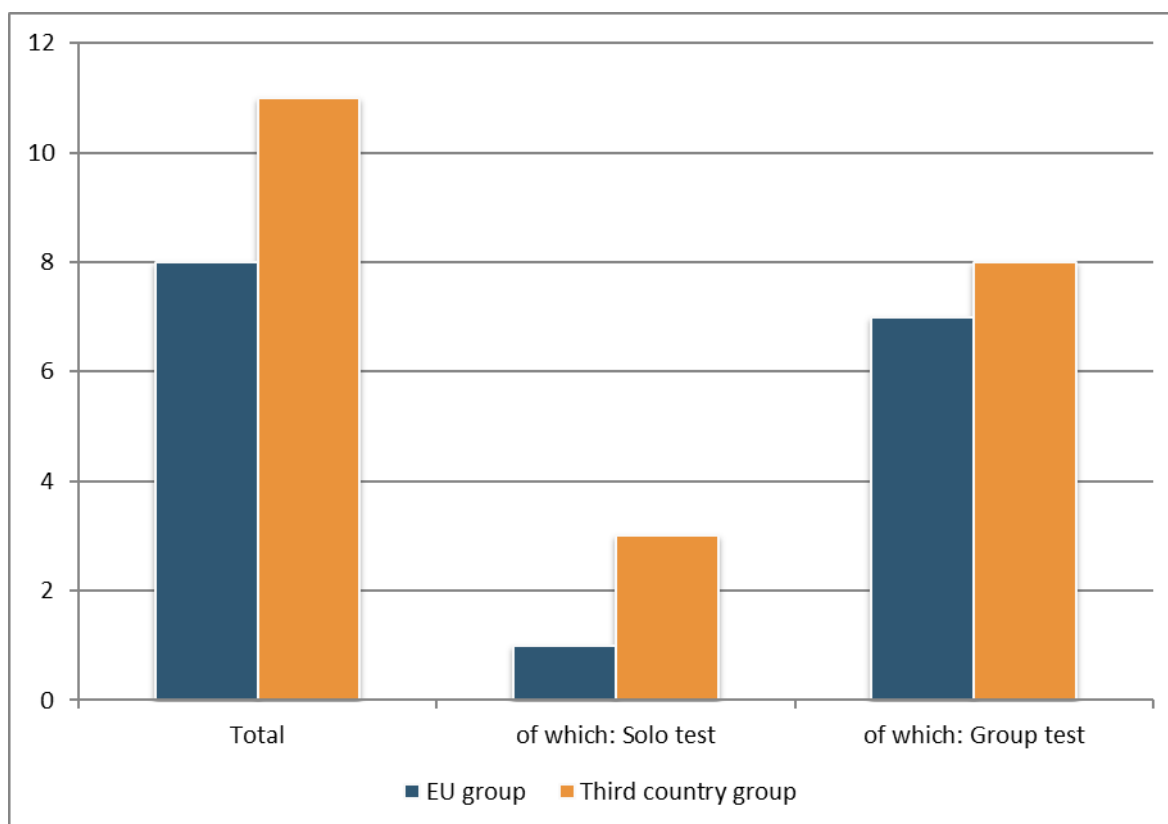


Sources: 2021 EBA data collection for Draft RTS on EUR 30 bn threshold methodology and EBA calculations.

Notes: 'Solo test' refers to the test based on the threshold calculated in accordance with Article 5 of the present RTS; 'Group test' refers to the test based on the threshold calculated in accordance Article 6 and 7 of the present RTS.

Out of the 19 firms that meet one of the thresholds referred to in Article 8a(1) of the CRD, 8 belong to an EU group while 11 belong to a third country group (Figure 2). More specifically, 7 of the firms that pass the threshold at group level belong to an EU group, while the remaining 8 firms belong to a third country group. Those 8 firms' ultimate parents are located in Australia, Canada, Japan and in the United States.

Figure 2: Number of firms meeting one of the thresholds referred to in Article 8a(1) of the CRD, by type of threshold test and location of group

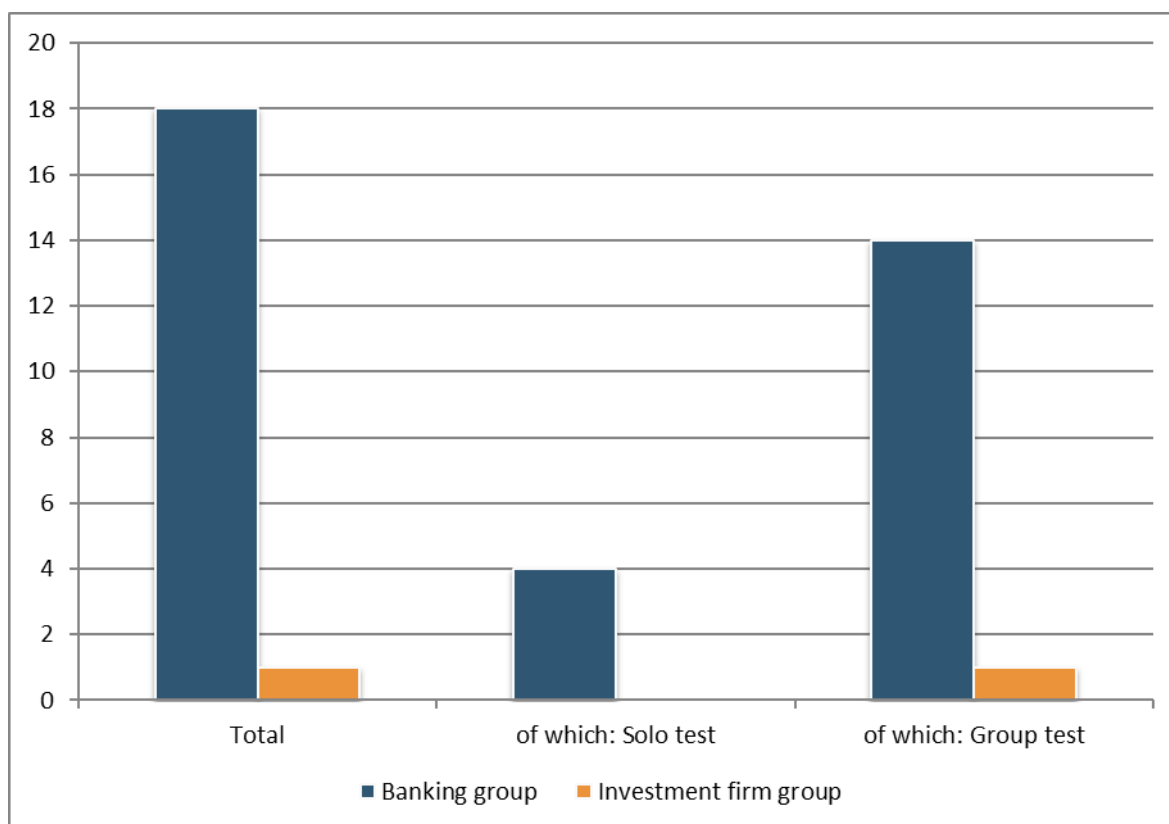


Sources: 2021 EBA data collection for Draft RTS on EUR 30 bn threshold methodology and EBA calculations.

Notes: ‘Solo test’ refers to the test based on the threshold calculated in accordance with Article 5 of the present RTS; ‘Group test’ refers to the test based on the threshold calculated in accordance Article 6 and 7 of the present RTS.

Turning to the type of group these firms belong to (Figure 3), the vast majority of them (18) belong to a banking group, with only 1 belonging to an investment firm group. In particular, out of the 15 firms that pass the threshold at group level, 14 of them belong to a banking group. These firms may already be subject to the CRR/CRD requirements (or similar requirements through the implementation of the Basel standards in third countries) at least at consolidated level, which can lead to reduced implementation and compliance costs with the full CRR/CRD rules.

Figure 3: Number of firms meeting one of the thresholds referred to in Article 8a(1) of the CRD, by type of threshold test and type of group



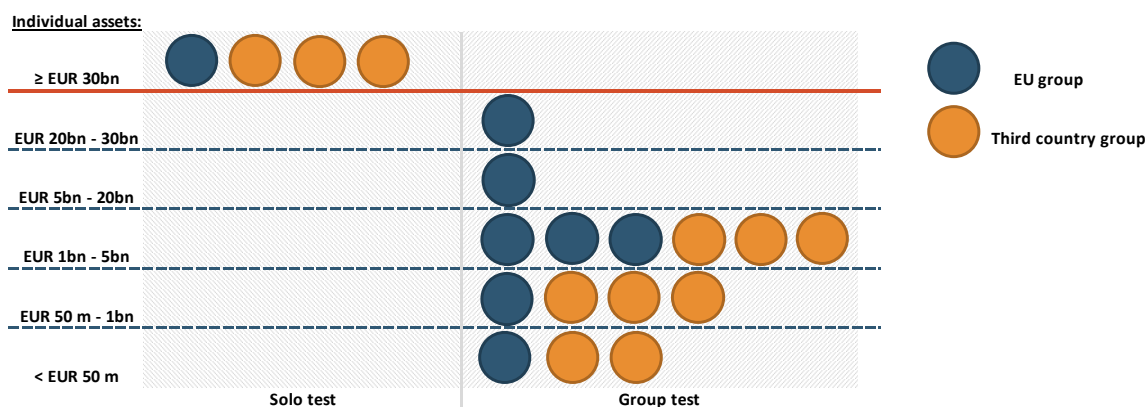
Sources: 2021 EBA data collection for Draft RTS on EUR 30 bn threshold methodology and EBA calculations.

Notes: 'Solo test' refers to the test based on the threshold calculated in accordance with Article 5 of the present RTS; 'Group test' refers to the test based on the threshold calculated in accordance Article 6 and 7 of the present RTS.

Focusing on the firms that pass the threshold at group level (15 in total), most of them have individual assets below EUR 5 billion: 6 between EUR 1 billion and EUR 5 billion, 4 between EUR 50 million to EUR 1 billion, and 3 below EUR 50 million. The 2 remaining firms have individual assets between EUR 5 billion and EUR 20 billion and EUR 20 billion and EUR 30 billion, respectively. While these firms may face higher regulatory costs from implementing the CRR/CRD, they are among the larger ones in the EEA population of investment firms.<sup>13</sup>

<sup>13</sup> Based on the 2020 EBA data collection on the population of investment firms (reference date: 31 December 2019), the median firm had individual assets of around EUR 1.6 million, with the interquartile range spanning from around EUR 0.4 million to EUR 6.6 million. Among the firms that were authorised to carry out MiFID activities (3) and (6) and not classified as commodity and emission dealers, the median firm had an individual assets of around EUR 14.5, with an interquartile range of EUR 3.7 to EUR 61.9.

Figure 4: Number of firms meeting one of the thresholds referred to in Article 8a(1) of the CRD, by type of threshold test, location of group and size of individual assets



Sources: 2021 EBA data collection for Draft RTS on EUR 30 bn threshold methodology and EBA calculations.

Notes: 'Solo test' refers to the test based on the threshold calculated in accordance with Article 5 of the present RTS; 'Group test' refers to the test based on the threshold calculated in accordance Article 6 and 7 of the present RTS.

## 4.2 Views of the Banking Stakeholder Group

The EBA Banking Stakeholder Group provided no comment on these draft RTS.

## 4.3 Feedback on the public consultation

The EBA publicly consulted twice on these draft RTS.

**The first consultation period** lasted for 3 months and ended on 4 September 2020. The draft RTS has been part of a Consultation paper including three draft RTS on the reclassification of certain investment firms to credit institutions, five draft RTS on capital requirements for investment firms at solo level, and one draft RTS on the scope and methods of prudential consolidation for investment firms at group level. Overall, 26 responses were received, of which 21 were published on the EBA website.

During the consultation period, comments were received regarding the scope of the assets being considered towards the calculation of the EUR 30bn threshold, namely that only EU assets should count towards the threshold. This suggestion is based on the fact that the IFR/IFD text is not unambiguously clear regarding the composition of assets between the EUR 30 bn threshold (relevant for identifying those investment firms that need to apply for a credit institutions authorization) and the EUR 15 bn threshold (relevant for identifying those investment firms that should apply the CRR/CRD regulatory framework, but still remain investment firms under the perimeter of the IFR/IFD regime). Some respondents argue that the co-legislators have overlooked this clarification in the level 1 text as regards the EUR 30 bn threshold and that the RTS, as it stands, provides incentives to firms to establish headquarters (i.e. head structures that would, in turn,



consolidate the EU entities) outside the EU in order to escape the categorisation as a credit institution. Finally, a number of comments have addressed the composition of the total assets (i.e. what should be included as asset in the calculation), as well as discussed aspects related to the proposed methodology for the calculation of the EUR 30 bn threshold.

**The second consultation period** lasted for 6 weeks and ended on 17 July 2021. There were 12 non-confidential replies and 3 confidential ones. Most comments received address the elements set out in the IFR/IFD text, subjects which are firmly outside the EBA mandate for the RTS. More specifically, several respondents have pointed out that the consequence of requiring certain investment firms, such as small firms belonging to large third country groups, to apply for a credit institution authorisation seems to go against the overall spirit of the reform that led to the creation of the IFR/IFD framework. Moreover, commentators proposed that the scope of the RTS be reduced to the EU assets of entities operating in the EU (i.e., only EU assets to be considered when calculating the threshold); an alternative to this proposal was also the proposal to introduce a significance threshold to be used when considering which EU entities belonging to third country groups should apply for a credit institution authorisation.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments, or the same body repeated its comments in its responses to different questions. In such cases, the comments and the EBA analysis are included in the section of this paper that the EBA considers most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

## Summary of key issues and the EBA’s response to the first consultation

	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
1	Recommend that the requirements utilise the same basis of calculation for all thresholds. This RTS uses “total assets” while Art 32(4) of the IFD uses “value of on and off-balance sheet assets”.	Basis for calculation of the EUR 30 bn threshold.	The RTS follows the text of the IFR. The IFR in Art. 62, amending Art 4 (1) CRR refers to “total value of consolidate assets”, which is the reason for using this metric. Article 32(4) of the IFD refers to remuneration, which is a different topic than the authorisation as a credit institution, it therefore makes sense to look at different elements when calculating the thresholds in question.	No change to the draft RTS.
2	We observe that as a result of the amendments that Regulation (EU) 2019/2033 makes to CRR, specifically that in CRR Article 4(1)(1)(b)(ii) ‘undertakings’ that are part of the group, that themselves already have the status of ‘credit institution’, are not excluded from the total value of consolidated assets that has to be calculated, has the potential effect of also much smaller investments firms receiving the status as credit institution.	The respondent suggests that there is a flaw in IFR in the fact that credit institutions are not excluded from the group test.	The IFR in Art. 62, amending Art 4 (1) CRR introduces three tests: a) Solo test b) Group test, according to which any undertaking that is part of a group and carrying out activities as referred in points 3 and 6 of Annex I of Directive 2014/65/EU c) Discretionary test In accordance with point b), “any undertaking” includes any investment firms, as well as any credit institution, which fulfils the requirements of the article.	No change to the draft RTS.

3	<p>Using Net Assets/Shareholders Funds would have the benefit of off-setting significant creation and redemption balances, a well-recognised metric, being subject to disclosure on an annual basis as part of the individual firm's disclosure requirement, and the likely to be aligned to the Own funds of the firm and therefore reflective of the risk profile of the firm.</p>	<p>The EUR 30 bn threshold will not be risk-sensitive if it does not take into account economically offsetting positions. Netting of assets with liabilities that are closely related and are largely offsetting.</p>	<p>A uniform approach should be used by all firms, therefore relying on existing accounting standards makes sense. Furthermore, it seems unfeasible to put together an ad hoc offsetting approach exclusively for the purposes of the current draft RTS or to enforce a methodology (e.g. SA-CCR) to all other investment firms trading on own account for which this calculation is only remotely relevant.</p>	<p>No change to the draft RTS.</p>
4	<p>Receivables from client/fund (depending on whether the transaction is a subscription or redemption) and vice-versa payable to the fund/client should be considered for exclusion from the definition of Total assets for the purposes of determining thresholds. This would remove significant volatility from the determination of Total assets of asset managers and allow a more consistent and risk sensitive application.</p>	<p>Calculation of total assets</p>	<p>The amounts corresponding to the receivables described in the comment should not amount to significant quantities and including them would only benefit a very limited number of firms. The total assets is an average quantity calculated over 12 months, thus volatility spikes should not have a lasting effect on the final calculation.</p>	<p>No change to the draft RTS.</p>
5	<p>Total asset value from an accounting standards' perspective is a poor metric for determining the risk profile of an investment firm and that the strict netting pre-requisites under (IFRS) accounting standards particularly penalizes investment firms with active</p>	<p>Calculation of total assets</p>	<p>In the context of the present draft RTS, the mandate requires determining the size of the firm, not an assessment of its riskiness, thus the decision to rely on accounting standards.</p>	<p>No change to the draft RTS.</p>

	<p>trading portfolios. It is proposed to determine total assets according to the prudential measures as prescribed within the Leverage Ratio calculation in CRR. The calculation of ‘total assets’ would be the sum of the following:</p> <ul style="list-style-type: none"> <li>• Total Assets as reported in the financial statement, excluding derivatives;</li> <li>• Total Derivatives Exposure using the Standardised Approach for Counterparty Credit Risk (SA-CCR) methodology.</li> </ul>		<p>Furthermore, calculating the total derivative exposure, should this approach be used, would result in all firms trading on own account having to implement the SA-CCR calculation exclusively for the purposes of calculating the total assets, even when they are far below the threshold.</p>	
6	<p>Assets that are deducted from own funds should also be deducted from the total assets definition in determining the meeting of the threshold</p>	<p>Calculation of total assets</p>	<p>The fact that some assets are deducted for the purposes of the own funds requirements is not relevant for the purposes of the calculation of assets for the thresholds.</p>	<p>No change to the draft RTS.</p>
7	<p>The term “prudential individual reporting” is not clearly defined. Without further clarity firms may not use the same basis for calculating the total value of assets for an institution.</p>	<p>Calculation of total assets</p>	<p>Based on the responses on the previous points, prudential individual reporting has not been included as an option for calculation of the EUR 30 bn threshold.</p>	<p>Notion removed from the Article.</p>
8	<p>The draft RTS should be amended to clarify that the solo and group tests are determined based on the value of EU assets of EU entities (including EU branches of non-EU groups in the case of the group test), as other thresholds</p>	<p>Scope of calculation of the total assets</p>	<p>With regards to EU groups, all assets of relevant entities should be considered in the scope of the EUR 30 bn threshold, and consistently, the same should be</p>	<p>Amendments brought to the RTS – explanation provided in the Background and Rationale section of the Final Report.</p>

	<p>in IFR/IFD (e.g. article 1(2) IFR concerning larger investment firms not treated as credit institutions that would still be subject to supervision under CRR/CRD) apply only to EU assets.</p>		<p>considered for all other groups in order to maintain a level playing field.</p> <p>Furthermore, the definition of 'group' in point (138) of Article 4(1) of Regulation (EU) No 575/2013 and point (13) of Article 3(1) of Directive 2019/2034/EU does not contain any geographical limitations.</p> <p>The different approach followed by the EU co-legislators in article 1(2) of the IFR is an evidence that, when the co-legislators' intention was to exclude from the calculation the assets of third country subsidiaries, they have expressly provided for such an exclusion in the IFR text.</p>	
9	<p>Formula in Article 9(3) of the draft RTS, particularly the definition of intragroup exposures (IE), is too restrictive; suggestion to delete "between the entities as defined in points a and c of Article 8 of this Regulation" from the definition of intragroup exposures.</p>	<p>Calculation of total assets</p>	<p>The EBA agrees with the comment.</p>	<p>Amendment brought to the RTS.</p>
10	<p>Suggestion that the reporting reference date should be used for the spot exchange rate.</p>	<p>Calculation of total assets</p>	<p>The EBA agrees with the comment.</p>	<p>Amendment brought to the RTS.</p>

## Summary of key issues and the EBA’s response to the second consultation

	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
1	Apply a group threshold which focuses on the assets of relevant EU firms and EU branches rather than a global group assets test; in particular, for the purposes of calculating the EUR 30bn group assets test, firms (whether part of an EU group or third country group) should include the assets of: (i) EU undertakings in the same group which conduct the activities referred to in points (3) and (6) of Section A of Annex I of MIFID II (Relevant MiFID II Activities), and which individually have total assets of less than EUR 30bn; and (ii) EU branches of third country firms in the same group that are authorised in the EU and which conduct Relevant MiFID II Activities.	Proposal put forward: introduce a group threshold based on EU assets.	The draft RTS does not define nor override the scope as set out in the IFD/IFR text. In particular, the draft RTS does not limit nor extend the notion of ‘group’, does not specify which entities should be included in the calculation and does neither set nor remove any threshold already introduced by the IFR/IFD text. Therefore, the proposed amendment seems to be targeting the legal text, which specifies the scope. The EBA mandate is limited to the methodology for the calculation of the threshold.	No change to the draft RTS.
2	The prudential framework established by IFR and IFD was designed to be more appropriately tailored to the nature, size, and complexity of investment firms’ activities, in particular by delivering a flexible prudential regime, with a focus on the risks posed by firms or groups established in or conducting	General concerns on the prudential framework: several respondents have pointed out the consequence of applying the CRR seems to be against the overall spirit of the IFR/IFD framework.	The RTS defines the methodology for the calculation of the threshold, which is based on the scope provided for in the IFR/IFD text.	No change to the draft RTS.

	activities/providing services within the Union.			
3	The revised Reclassification RTS risks undermining the policy objectives of the IFR/IFD and causing severe unintended consequences, including new level playing field concerns.	The revised draft, in fact risks creating a highly unlevel playing field among similarly sized EU firms with similar risk profiles.	The IFR/IFD text already proposes two different treatments for investment firms, depending on their activities or their size or the size of the group they belong to. The current RTS only specifies how to calculate the threshold based on which the firms are allocated to one or the other of these regimes.	No change to the draft RTS.
4	The current proposals will require smaller EU investment firms to be authorised as credit institutions despite the risks presented by such firms not justifying bank-like prudential treatment. Also, the IFR already provides for situations where: 1) firms pose systemic risk to EU markets; 2) there are small EU subsidiaries of third country groups; 3) non-EU undertakings are part of an EU consolidation group.	The non-EU activities of non-EU group undertakings are purely a function of the business model and geographic footprint of the non-EU group; they are by no means a regulatory arbitrage device.	The IFR/IFD framework also requires firms to change prudential regime. The context and conditions where this should happen are provided for in the IFR/IFD text. The draft RTS only provides further details on how these conditions apply. However, based on the impact assessment's results, impact seems limited to a small number of firms.	No change to the draft RTS.
5	The current RTS will bring adverse consequences for firms and regulators of disproportionate treatment of small EU investment firms: i) administratively and operationally burdensome re-authorisation process; ii) complex, burdensome and wholly disproportionate application of the CRR (as compared to the IFR), while not	The RTS will lead to smaller EU investment firms being subjected to CRR requirements which were designed for firms with a very different business model and risk profile to those of most investment firms undertaking dealing on own account activity.	NCA's should comply with CRD provisions in Article 8a(5). While the IFR/IFD text clearly points to the legislators' intention to have certain firms under a different prudential regime, the result of the data collection exercise highlights that few firms	No change to the draft RTS.

	<p>providing additional prudential benefits:</p> <p>1) firms would be subject to the strictest form of regulatory capital and liquidity requirements as well as a binding leverage ratio requirement and large exposure rules;</p> <p>2) firms would be subject to rules designed for firms with a very different business model and risk profile to that of an investment firm undertaking Relevant MiFID II Activities, whereas their EU peers subject to the IFR/IFD will receive a more proportionate treatment;</p> <p>3) firms will become subject to stricter rules compared to the pre-existing CRR regulatory position as well as to the post-IFR/IFD position, even though their business models and thus their risks are very distinct from those of traditional credit institutions.</p>		<p>only are captured by the extension of the scope for the calculation.</p>	
6	<p>Subjecting some smaller EU investment firms to ongoing regulation as credit institutions will create significant burdens for national competent authorities and/or the ECB as supervisors.</p>	<p>Change in supervisors and rulebook - consequences of being supervised by the SSM.</p>	<p>This is a natural consequence of the change in prudential regime required by the IFR/IFD text.</p>	<p>No changes to the draft RTS.</p>
7	<p>By subjecting smaller market participants to CRR, national authorities may be incentivised to develop additional domestic</p>	<p>Subjecting some smaller EU investment firms to ongoing regulation as credit institutions will create significant burdens for national</p>	<p>Supervisory action is beyond the scope of the mandate of the present draft RTS.</p>	<p>No changes to the draft RTS.</p>



	<p>approaches and derogations to address the unintended consequences (e.g., to allow derogations from the CRR requirements to which deposit-taking firms are subject).</p>	<p>competent authorities and/or the ECB as supervisors.</p>	<p>The draft RTS further clarifies the conditions under which firms are required to apply for a credit institution authorisation. However, the fact that some firms will have to change the prudential regime is a consequence of the IFR/IFD text.</p>	
8	<p>The draft RTS will lead to smaller EU investment firms being subjected to CRR requirements which were designed for firms with a very different business model and risk profile to those of most investment firms undertaking dealing on own account activity</p>	<p>The draft RTS brings firms into scope of EU resolution regime.</p>	<p>The implications regarding the resolution regimes is not within the scope of the mandate.</p>	<p>No changes to the draft RTS.</p>
9	<p>The draft RTS could lead to adverse outcomes for end-investors and consumers: i) establishing and/or maintaining EU investment firms may become less attractive to third country headquartered groups; ii) existing EU firms might also be incentivised to make changes to their business model to prevent the disproportionate consequences of the Reclassification RTS – which could lead to less competition and liquidity in relevant markets for EU consumers and end-investors.</p>	<p>The medium- to longer-term consequences of the Reclassification RTS could lead to adverse outcomes for end-investors and consumers.</p>	<p>These consequences are direct consequences of the notion of ‘group’ setting out the scope in the IFR/IFD text and of the thresholds also defined therein. Including them in the impact assessment of the draft RTS would be equivalent to performing an impact assessment for the IFR/IFD text, which is clearly not in the scope of this specific EBA mandate. Nonetheless, the outcome of the data collection, clearly identify the size and characteristics of the</p>	<p>No changes to the draft RTS.</p>

			entities affected by the enlargement of the scope.	
10	The RTS will cause severe unintended consequences which do not appear to have been contemplated or assessed in the EBA's cost-benefit analysis or impact assessment.	Need for further cost-benefit analysis.	The EBA cost-benefit analysis concerns the draft RTS, not the entire framework introduced by the CRD. Nonetheless, a data collection to assess which firms and of which type and size are in the scope of the draft RTS was ran in parallel with the public consultation. The result of that data collection highlights that a limited number of firms exceed the threshold.	No changes to the draft RTS.  The cost benefit-analysis has been updated accordingly.
11	The outcomes which would flow from the revised draft Reclassification RTS as currently proposed by the EBA are inconsistent with the policy intention of IFR/IFD which was to develop a prudential regime proportionate to the nature, risk profile and activities of investment firms	The approach put forward in the draft Reclassification RTS is inconsistent with, and beyond the scope of, the IFR/IFD text.	The scope of the entities to be included in the calculation is prescribed in the IFR/IFD text amending the CRR/CRD. Simplifications were introduced in the draft RTS to allow a simple, yet still comparable, calculation. For example, the possibility to calculate the threshold only every quarter rather than every month should substantially alleviate the process.	No changes to the draft RTS.