

EBA/CP/2021/01

15/01/2021

Consultation Paper

Guidelines

on the monitoring of the threshold and other procedural aspects
on the establishment of intermediate EU parent undertakings
under Article 21b of Directive 2013/36/EU

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper.

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 15 March 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 (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Article 21b of Directive 2013/36/EU introduced a requirement for institutions belonging to third-country groups to have an intermediate EU parent undertaking (IPU) established in the Union, where the total value of assets in the Union of the third-country group is equal to or greater than EUR 40 billion.

The EBA considers that a common methodology for calculating the total value of assets in the Union as well as consistent supervisory expectations are essential for ensuring a consistent application of the IPU requirement. Therefore, in accordance with Article 16 of Regulation (EU) No 1093/2010, the EBA decided to provide this necessary guidance to the institutions that are part of third-country groups operating in the Union and to the competent authorities responsible for supervision over the institutions and branches belonging to the third-country groups.

Following the suggestion of the European Commission expressed in their letter to the EBA, the guidelines clarify the relevant dates for the calculation of the total value of the assets in the Union, taking into account the fluctuation in the value of assets. In particular, the guidelines specify that for the purpose of the application of the IPU requirement, the total value of assets in the Union of the third-country group should be calculated as an average over the last four quarters. This value should be monitored on a quarterly basis and communicated to relevant competent authorities.

In order to meet the IPU requirement in a timely manner it is necessary that institutions belonging to third-country groups apply a forward-looking approach. It is therefore specified that they should assess at least annually whether the threshold is expected to be breached within the three-year horizon, based on the strategic planning of the third-country group and the projections of assets. For the purpose of both the quarterly assessments and the annual forward-looking monitoring, institutions and branches belonging to a third-country group should exchange between each other all necessary information.

In addition, these guidelines specify certain procedural aspects related to the monitoring of the threshold by competent authorities and the establishment of the IPU where necessary. In particular, clarification is provided on the notifications required by Article 21b(6) of Directive 2013/36/EU, namely that these are to be provided to the EBA on an annual basis. In addition, certain exceptional situations are specified where competent authorities may specify appropriate timelines for the establishment of an IPU, no longer than up to two years from reaching the threshold. Relevant competent authorities should coordinate and take necessary measures to ensure adequate implementation of the IPU requirement.

Next steps

Due to urgency of providing clarifications in the light of application of Article 21b of Directive 2013/36/EU and taking into account limited complexity of the text, the draft guidelines are published for a two-month consultation period. Consultation responses can be provided by filling in the form on the EBA website.

3. Background and rationale

3.1 Introduction

1. The Directive (EU) 2019/878 (CRD V) introduced in the prudential framework a requirement for certain third-country groups to have an Intermediate EU Parent Undertaking (IPU), with a view to ensure the consolidated supervision of the EU activities of such groups and facilitate the resolution of those activities.
2. Article 21b of Directive 2013/36/EU requires that two or more institutions in the Union, which are part of the same third-country group, have a single IPU that is established in the Union, where the combined total value of assets of the group in the Union is equal to or greater than EUR 40 billion (IPU threshold). The total value of assets in the Union includes the assets of any institutions belonging to the third-country group as well as any branches authorised to operate in the Union¹. Under certain circumstances, in particular in the case of mandatory requirements for separation of activities imposed in some third countries, and subject to the approval by competent authorities, it is allowed to set up two IPUs for a third-country group operating in the EU. Such possibility is granted under Article 21b(2) of Directive 2013/36/EU. However, regardless of whether a third-country group is subject to any requirements on separation of activities or not, the calculation of the IPU threshold remains the same and requires aggregation of financial information on all institutions and branches authorised in the Union and belonging to the same third-country group.
3. The terms ‘institution’, ‘EU parent institution’ and ‘parent undertaking’ should be understood as in Article 3(3) of Directive 2013/36/EU.
4. As clarified in Article 21b(3) of Directive 2013/36/EU, the IPU may take the form of an authorised credit institution, or a financial holding company or a mixed financial holding company that has been granted approval in accordance with Article 21a of Directive 2013/36/EU. Where none of the institutions operating in the Union which are part of a third-country group is a credit institution, the IPU may take the form of an authorised investment firm. In addition, where a second IPU must be set up in connection with investment activities to comply with a mandatory requirement as referred to under point (a) of Article 21b(2) CRD, the second IPU may be an authorised investment firm.
5. Finally, Article 21b(8) of Directive 2013/36/EU specifies a transitional period for implementing the requirement by clarifying that “...third-country groups operating through more than one institution in the Union and with a total value of assets in the Union equal to or greater than

¹ The composition of the total value of assets in the Union is given in Art 21b (5): “...the total value of assets in the Union of the third-country group shall be the sum of the following:

- (a) the total value of assets of each institution in the Union of the third country-group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and
- (b) the total value of assets of each branch of the third-country group authorised in the Union in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council.”

EUR 40 billion on 27 June 2019 shall have an intermediate EU parent undertaking or, if paragraph 2 applies, two intermediate EU parent undertakings by 30 December 2023.”

3.2 Legal basis and scope of the guidelines

6. The European Commission sent to the EBA a letter dated 3 June 2020 encouraging the EBA to provide guidance on certain technical aspects of the calculation of the IPU threshold, for instance:
 - how to determine the relevant cut-off date for the calculation of the total value of the assets in the EU; and
 - how to take into account the fluctuation in the amount of EU assets when calculating the threshold.
7. The EBA considers that a common methodology for calculating the IPU threshold as well as consistent supervisory expectations are essential for ensuring a consistent application of the IPU requirement. Therefore, the EBA decided to provide this necessary guidance both to the institutions that are part of third-country groups operating in the Union and to the competent authorities responsible for supervision over the institutions and branches belonging to the third-country groups.
8. Branches belonging to third-country groups as referred to in Article 21b(5) point (b) of Directive 2013/36/EU should be included within the scope of these guidelines and competent authorities authorizing or supervising those branches should ensure that they comply with them.
9. Against this background, the EBA adopts these guidelines on its own initiative and in accordance with Article 16 of Regulation (EU) No 1093/2010, according to which the EBA “*shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial institutions and issue recommendations to one or more competent authorities or to one or more financial institutions*”.

3.3 Specifications on the calculation and monitoring of the threshold

10. There is a need to determine how the total value of assets in the Union of a third-country group should be calculated in accordance with Article 21b(5) of Directive 2013/36/EU. For that purpose, the guidelines specify that the calculation is made by adding the assets of the EU parent institutions of that group consolidated in accordance with Article 18 of Regulation (EU) No 575/2013 (prudential consolidation) at the highest level of consolidation in the Union to the individual assets of institutions that are not part of a group subject to consolidated supervision pursuant to Article 111 of Directive 2013/36/EU (“stand-alone institutions”) and to the assets of the branches of that group referred to in point (b) of Article 21b (5) of Directive 2013/36/EU.
11. To ensure convergence of the calculation of the threshold across the Union, such calculation should be based on reliable data: where financial information provided for the purpose of supervisory reporting is available, that information should be used, while where such financial information is not available, interim financial information should be used.

12. To determine in a harmonized way where the threshold set out in Article 21b(4) of Directive 2013/36/EU has been reached having regard to the fluctuation in the amount of assets, these guidelines clarify that the threshold is deemed as reached where the average of the total value of assets in the Union of a third-country group over the previous four quarters, equals or exceeds EUR 40 billion.
13. Equally there is a need to specify in a prudent but proportionate way, having also regard to the need for financial stability in the Union, when the threshold set out in Article 21b(4) of Directive 2013/36/EU is deemed as not anymore exceeded and the relevant institutions of the third-country group are relieved from their obligation to have an IPU established in the Union. To that end, these guidelines specify that the threshold is deemed as not anymore exceeded, where the total value of assets in the Union of a third-country group remains below EUR 40 billion for twelve consecutive quarters and there are no reasonable expectations it will increase again above EUR 40 billion.
14. Monitoring of the threshold by institutions that are part of a third-country group should be forward-looking, so that the institutions that are part of that group are able to perform their obligations under Article 21b of Directive 2013/36/EU when the threshold is exceeded. To that end, at least annually the threshold should be assessed against the strategic planning and the forecast of assets for the time horizon of at least three years for the group in its entirety (“forward-looking monitoring”).
15. These guidelines should also specify how institutions that are part of a third-country group should monitor the threshold set out in Article 21b(4) of Directive 2013/36/EU. It is therefore clarified that EU parent institutions and stand-alone institutions that are part of a third-country group should be the ones performing the relevant quarterly assessments and the annual forward-looking monitoring for the group as a whole. Upon their establishment the quarterly assessment should be performed by the IPUs only, and the forward-looking monitoring is no longer necessary.
16. Having regard to the transitional provision set out in Article 21b(8) of Directive 2013/36/EU, it should be determined that the total value of assets in the Union of these third-country groups should be calculated on a point-in-time basis as at 27 June 2019 and not on the basis of any average. Where the value of that date is not available, the total value of assets as at 30 June 2019 should be used, as an approximation of the value as at 27 June 2019. Additionally, where Article 21b(8) CRD applies, the threshold should be deemed as reached only where on 30 December 2023, the average of the total value of assets in the Union of the group over the previous four quarters equals or exceeds EUR 40 billion.

3.4 Information exchange between institutions and branches of a third-country group and submissions to competent authorities

17. In order to be able to perform quarterly assessments and the forward-looking monitoring, these guidelines should specify that institutions and branches of a third-country group should exchange between each other all relevant information.
18. To enable institutions that are part of third-country groups but are not themselves EU parent institutions or stand-alone institutions performing the quarterly assessment to discharge their

obligation under Article 21b Directive 2013/36/EU, these guidelines should specify that the EU parent undertakings make these assessments available to their subsidiaries.

19. Further to the information on the quarterly assessments that should be submitted to the competent authorities, there is a need to ensure that EU parent institutions and stand-alone institutions of a third-country group alert, where they expect that their third-country group will reach the threshold within the next three years based on the forward-looking monitoring, the competent authority that is to be determined as the consolidating supervisor in accordance with paragraphs (3) and (5) of Article 111 of Directive 2013/36/EU under the assumption that all institutions authorised in the Union were part of a group subject to consolidated supervision pursuant to that Article 111 having the same parent EU financial holding company (“consolidating supervisor”), or as appropriate, where none of the institutions of a third-country group is a credit institution, the competent authority that is to be determined as the group supervisor in accordance with Article 46 of Directive (EU) 2019/2034 (“group supervisor”).

3.5 Guidance for competent authorities

20. These guidelines should set out that competent authorities should make every effort to ensure that institutions and branches comply with their obligations under Article 21b of Directive 2013/36/EU.
21. There is also a need to specify in a convergent way how competent authorities should notify to the EBA the information specified in Article 21b(6) of Directive 2013/36/EU: competent authorities should provide the information they have received from the institutions and branches to the EBA on an annual basis without undue delay and no later than 30 June of any given year, while the total value of assets of each supervised institution or branch should be notified as the average of the total value of assets over the four quarters of the previous calendar year.
22. Where a competent authority determined as the consolidating or group supervisor has received the forward-looking notification, it should liaise with the notifying institution and with other relevant authorities. A number of issues should be determined at this early stage, such as whether the derogation referred to in Articles 21b(2) and 21b(3), second indent, of Directive 2013/36/EU should apply to this particular third-country group and the timeline for the establishment of the IPU should be set.
23. To ensure financial stability in the Union, while determining the relevant timeline for the establishment of the IPU, competent authorities should, in principle, ensure that the IPU will be in operation at the moment the threshold has been reached.
24. To ensure proportionality, it should be possible for competent authorities to provide the relevant institutions with a longer timeline, where this is deemed appropriate, in particular where reaching of the threshold was not foreseeable in the forward-looking monitoring of the threshold (for instance due to mergers and acquisitions not foreseeable in the strategic planning) or where there is a reasonable anticipation of the total value of that group’s assets to permanently drop below the threshold within one year from reaching the threshold.

25. To ensure convergence in providing longer timelines as per the previous paragraph, there is a need to set out a maximum timeline that can be set by the competent authorities, which may not exceed two years from the date the threshold has been met, except when the total value of assets in the Union of the third-country group drops below EUR 40 billion and remains below that threshold.
26. There is a need to set out that where the threshold has been exceeded but an IPU has not been established, the competent authorities of the institutions of that third-country group should coordinate among themselves in order to take all the measures necessary to ensure that Article 21b of Directive 2013/36/EU is complied with.
27. To ensure proportionality, the consolidating supervisor and, where applicable, the group supervisor and the competent authorities should be able to permit, following a request by the third-country group, the restructuring of that third-country group such that it no longer has the IPU before the end of the period of twelve quarters, where the total value of assets in the Union has dropped significantly and permanently below the threshold as a result of strategic changes in European operations of the third-country group.

4. Draft guidelines

In between the text of the draft guidelines that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

EBA/GL/20XX/XX

DD Month YYYY

Draft Guidelines

on the monitoring of the threshold and other procedural aspects on the establishment of an intermediate EU parent undertaking under Article 21b of Directive 2013/36/EU

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010². In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines lay down how to calculate and monitor the threshold for the obligation to establish an intermediate EU parent undertaking according to Article 21b of Directive 2013/36/EU and specify certain procedural aspects on the establishment of intermediate EU parent undertakings

Scope of application

6. These guidelines apply to credit institutions and investment firms authorised in the Union, which are part of third-country groups (“institutions”) and to the branches referred to in point (b) of Article 21b (5) of Directive 2013/36/EU (“third-country branches”).

Addressees

7. These guidelines are addressed to competent authorities as defined in points (2)(i) and (2)(viii) of Article 4 of Regulation (EU) No 1093/2010 and to financial institutions as defined in point (1) of Article 4 of Regulation (EU) No 1093/2010 where these financial institutions fall within the scope of these guidelines.

Definitions

8. Unless otherwise specified, terms used and defined in Directive 2013/36/EU and Directive (EU) 2019/2034 have the same meaning in the guidelines.

3. Implementation

Date of application

9. These guidelines apply from dd.mm.yyyy *[date provided in paragraph 3 for reporting compliance, i.e. 2 months after all translations of the guidelines are available]*

4. Guidelines

Specifications as to the calculation and monitoring of the threshold

10. The total value of assets in the Union of a third-country group should be calculated in accordance with Article 21b (5) of Directive 2013/36/EU as the sum of the assets of the EU parent institutions of that group consolidated in accordance with Article 18 of Regulation (EU) No 575/2013 at the highest level of consolidation in the Union plus the individual assets of institutions that are not part of a group subject to consolidated supervision pursuant to Article 111 of Directive 2013/36/EU (“stand-alone institutions”) plus the assets of the third-country branches of that group.

Explanatory box for consultation purposes:

According to point (a) of Article 21b(5) of Directive 2013/36/EU the total value of assets of each institution in the Union of a third-country group should be based on its consolidated balance sheet or individual balance sheet, where an institution's balance sheet is not consolidated. Clarification is proposed that for the purpose of calculating the total value of assets in the Union the consolidated balance sheet should be used reflecting the highest level of consolidation in the Union, and including the supervisory perimeter of consolidation. It means that where such perimeter of consolidation includes more than one individual institution, the assets of any subsidiaries of an institution in the EU should not be counted again individually when determining the total value of assets in the Union.

It can be noted that the supervisory perimeter of consolidation may include also some subsidiaries or branches established in third countries. For consistency with the prudential framework, and with the added value of simplicity, it is proposed that the assets of any third-country subsidiaries or branches included in the scope of consolidation at the highest level in the Union should not be deducted specifically for the purpose of the IPU threshold. As these assets are also included in the consolidated supervision in the EU, they should remain part of the total value of assets in the Union.

Question for consultations:

Question 1: Do you agree with the proposed clarifications with regard to the scope of consolidation? If in your view institutions belonging to third-country groups operating in the Union can have significant assets in third countries, please provide examples and, if possible, relevant values of assets.

11. For the calculation referred to in the previous paragraph, the following should apply:

- a. where financial information is available on a quarterly basis in accordance with Part Seven A of Regulation (EU) No 575/2013 and the relevant delegated and implementing acts, that information should be used;

- b. where financial information is not available on a quarterly basis in accordance with Part Seven A of Regulation (EU) No 575/2013 and the relevant delegated and implementing acts, interim financial information used for supervisory reporting should be used.
- 12. The threshold set out in Article 21b(4) of Directive 2013/36/EU should be deemed as reached, where the average of the total value of assets in the Union of a third-country group calculated in accordance with paragraphs 10 and 11 over the previous four quarters, equals or exceeds EUR 40 billion.
- 13. By way of derogation from the previous paragraph, for third-country groups operating through more than one institution in the Union as referred to in Article 21b(8) of Directive 2013/36/EU, the threshold should be deemed as reached and the obligation referred to in that Article should be deemed as applicable, where both conditions are met:
 - a. The total value of assets in the Union of that group calculated in accordance with paragraphs 10 and 11 on a point-in-time basis as at 27 June 2019 equals or exceeds EUR 40 billion;
 - b. On 30 December 2023, the average of the total value of assets in the Union of the group as set out in paragraph 12 equals or exceeds EUR 40 billion.

For the purpose of point (a), where the total value of assets in the Union as at 27 June 2019 is not available, this value should be approximated by taking the total value of assets as at 30 June 2019.

Explanatory box for consultation purposes:

For the purpose of the monitoring of the IPU threshold it is desirable that the total value of assets taken into consideration is sufficiently stable and reliable. The value of assets at any given point in time may include some short-terms effects or exceptional operations. Therefore, in order to achieve greater stability of data and avoid any potential window-dressing activities, it is proposed that the value of assets should be based on an average over the previous year. For simplicity, it is proposed that the average is calculated based on quarterly data. This is largely aligned with the frequency of existing supervisory reporting. It has to be noted that where institutions are not obliged to provide supervisory reporting on a quarterly basis, the necessary financial data may be based on the interim information, as used for internal purposes.

Question for consultations:

Question 2: Do you agree with the proposed clarification with regard to the calculation of the total value of assets in the Union for the purpose of the IPU threshold?

- 14. The threshold set out in Article 21b(4) of Directive 2013/36/EU should be deemed as not anymore exceeded, where the total value of assets in the Union of a third-country group calculated in accordance with paragraph 10 and 11 remains below EUR 40 billion for twelve

consecutive quarters and there are no reasonable expectations it will increase again above EUR 40 billion.

15. EU parent institutions and stand-alone institutions that are part of a third-country group should calculate at least on a quarterly basis in accordance with paragraphs 10 and 11 the total value of assets in the Union of the group in its entirety, and assess whether the threshold has been reached, exceeded or not exceeded in accordance with paragraphs 12 to 14 (“quarterly assessments”). Upon their establishment only the intermediate EU parent undertakings should conduct these calculations and the quarterly assessments.
16. Until the establishment of the intermediate EU parent undertakings in line with Article 21b(1) or (2) of Directive 2013/36/EU, EU parent institutions and stand-alone institutions that are part of a third-country group should monitor on a forward-looking basis and at least annually the threshold assessed in accordance with these guidelines, against strategic planning and the forecast of assets for the time horizon of at least three years for the group in its entirety (“forward-looking monitoring”).

Information exchange between institutions and branches of a third-country group and submissions to competent authorities

17. For the quarterly assessments and the forward-looking monitoring to be performed EU parent institutions, including the intermediate EU parent undertakings upon their establishment, stand-alone institutions and third-country branches of a third-country group should exchange between themselves in a timely manner all information required. In particular, third-country branches should submit in a timely manner to the EU parent institutions and to the stand-alone institutions of the relevant third-country group all information necessary for the calculation in accordance with paragraph 10 and 11 of the total value of their assets. Upon the establishment of the intermediate EU parent undertakings in line with Article 21b(1) or (2) of Directive 2013/36/EU third-country branches of that third-country group should provide that information to the intermediate EU parent undertakings, but no longer to the stand-alone institutions of the relevant third-country group.
18. EU parent institutions and stand-alone institutions of a third-country group should coordinate to alert, providing all relevant information and without undue delay, the competent authority that is to be determined as the consolidating supervisor in accordance with paragraphs (3) and (5) of Article 111 of Directive 2013/36/EU under the assumption that all institutions authorised in the Union were part of a group subject to consolidated supervision pursuant to that Article having the same parent EU financial holding company (“consolidating supervisor”) or as appropriate, where none of the institutions of a third-country group is a credit institution, the competent authority that is to be determined as the group supervisor in accordance with Article 46 of Directive (EU) 2019/2034 (“group supervisor”), where they expect that their third-country group will reach the threshold within the next three years based on the forward-looking monitoring.

19. EU parent institutions and stand-alone institutions of a third-country group should coordinate to submit in a timely manner to their respective competent authorities the quarterly assessments along with all accompanying financial information. Upon the establishment of the intermediate EU parent undertakings, the quarterly assessments along with all accompanying financial information should be provided only by the intermediate EU parent undertakings to the consolidating or the group supervisor as appropriate. Third-country branches should submit to their competent authorities the information referred to in paragraph 17.
20. EU parent institutions of a third-country group, including the intermediate EU parent undertakings upon their establishment, should provide in a timely manner and without undue delay to their subsidiaries their quarterly assessments and forward-looking monitoring along with all relevant accompanying information.
21. Where the forward-looking monitoring shows that a third-country group will reach the threshold, the EU parent institutions and the stand-alone institutions of that group should apply for all supervisory procedures sufficiently ahead in time and take all necessary steps in order to fulfil all necessary legal requirements for the intermediate EU parent undertaking to be immediately operational once the threshold is reached.

Explanatory box for consultation purposes:

Article 21b(1) of Directive 2013/36/EU imposes an obligation on individual institutions belonging to third-country groups to have an intermediate EU parent undertaking that is established in the Union. The exception from this requirement is specified in paragraph (4) of that article for those institutions which belong to third-country groups with the total value of assets in the Union of less than EUR 40 billion. Consequently, the monitoring of whether this threshold has been reached or is likely to be reached requires aggregation of the information on assets of all institutions and branches of a given third-country group authorised in the Union. Therefore, these guidelines specify requirements for institutions and branches belonging to the same third-country group to exchange necessary information between each other in order to be able to monitor the threshold and meet the IPU requirement in a timely manner.

While only EU parent institutions and stand-alone institutions belonging to third-country groups are specifically requested to provide information on the monitoring of the threshold to competent authorities, the requirement specified in Article 21b(1) of Directive 2013/36/EU is imposed also on those other institutions belonging to third-country groups which have an EU parent. As these institutions should therefore also be aware of whether the exception of Article 21b(4) of Directive 2013/36/EU applies, it is specified in these guidelines that EU parent institutions should inform their subsidiaries about the results of the quarterly assessment and forward-looking monitoring.

Question for consultations:

Question 3: Do you agree with the proposed requirements for the exchange of information? Do you see any potential obstacles to exchanging the necessary information between the institutions and branches in the Union, which are part the same third-country group?

Guidance for competent authorities

22. Competent authorities should make every effort to ensure that institutions and third-country branches, or upon their establishment the intermediate EU parent undertakings and third-country branches, comply with their obligations under Article 21b of Directive 2013/36/EU as specified in these guidelines. In particular, competent authorities should ensure that they receive from institutions and third-country branches, or upon their establishment from the intermediate EU parent undertakings and third-country branches, all information set out in paragraph 19.
23. For the purposes of the notification set out in Article 21b(6) of Directive 2013/36/EU, competent authorities should submit to the EBA on an annual basis, without undue delay and no later than 30 June of any given year, the information which they have received from institutions and third-country branches or upon their establishment from the intermediate EU parent undertakings and third-country branches, in accordance with paragraph 19 for the four quarters of the previous calendar year.
24. Notwithstanding paragraph 23, in case of a material change of the total value of assets of an institution or of a third-country branch that are part of a third-country group, the competent authority should during the year notify the EBA about this change without undue delay. The total value of assets of these institutions or third-country branches should be notified as the average of the total value of those assets calculated over the previous four quarters irrespectively of the calendar year.
25. Where the consolidating or the group supervisor has received the notification referred to in paragraph 18, or where the quarterly assessment shows that the threshold has been reached and the intermediate EU parent undertaking has not been established yet, the consolidating supervisor or the group supervisor should liaise with the notifying institution and with other relevant authorities at least for the following to be determined without undue delay:
 - a. Whether the derogations referred to in Articles 21b(2) and 21b(3), second indent, of Directive 2013/36/EU should apply to this particular third-country group;
 - b. Having regard to paragraphs 26 and 27, the timeline for the establishment of the intermediate EU parent undertaking.
26. In determining the relevant timeline referred to in point (b) of paragraph 25, competent authorities should ensure that the intermediate EU parent undertaking will be in operation when the threshold will have been reached. Institutions should make every effort to comply with this requirement in a timely manner.
27. Notwithstanding paragraph 26 and for the purposes of application of point (b) of paragraph 25, competent authorities may provide for an adequate timeline for the establishment of an intermediate EU parent undertaking where reaching the threshold was not foreseeable within the forward looking-monitoring set out in paragraph 16 and as a result the timeline as specified

in paragraph 26 cannot be met, in particular in cases such as mergers and acquisitions not foreseeable in the strategic planning of the group, or where there is reasonable anticipation of the total value of that group's assets in the Union to permanently drop below the threshold within a period not exceeding one year from the date the threshold was reached. The timeline should be as short as possible and in any case not exceed two years from the date the threshold was reached, unless the total value of assets in the Union of that group has dropped and remains below the threshold.

Explanatory box for consultation purposes:

Article 21b(1) of Directive 2013/36/EU requires that two or more institutions in the Union, which are part of the same third-country group, shall have an intermediate EU parent undertaking that is established in the Union, unless the total value of assets in the Union of that third-country group is less than EUR 40 billion (as specified in paragraph 4 of that Article). The transitional period for implementing this requirement is specified in Article 21b(8) of Directive 2013/36/EU, which allows third-country groups operating in the Union and with a total value of assets greater than EUR 40 billion on 27 June 2019, to have an intermediate EU parent undertaking or undertakings by 30 December 2023. The Directive does not envisage any transitional period for any other third-country groups reaching the threshold after 27 June 2019.

In order for third-country groups to meet the requirements in a timely manner, they should monitor their assets in the Union in a forward-looking manner. It is therefore specified that they should monitor not only the actual value of assets ex-post, but also ex-ante based on their strategic planning and projections of assets for the time horizon of at least three years. Based on such monitoring the third-country groups should be able to prepare in advance and set up an intermediate EU parent undertaking by the time the threshold is reached.

However, it is considered that in certain exceptional cases, where necessary, competent authorities may determine an appropriate timeline for establishing an intermediate EU parent undertaking on a case-by-case basis, as part of their normal supervisory practices. Importantly, any decision to grant more time for the set up of the IPU (up to two years) should be duly motivated. In particular, it may be justified to specify appropriate timelines for establishing an intermediate EU parent undertaking where the increase in the total value of assets is a result of an unforeseen one-off transaction, or a merger or acquisition that was not part of longer-term strategic planning of a third-country group. Competent authorities may also take into account the extent of any supervisory approval processes necessary for establishing the intermediate EU parent undertaking. Similarly, competent authorities may take into account situations where third-country groups have well-established plans to reduce the assets in the Union within a short period of time. In such cases, competent authorities may agree not to establish an IPU before the sale, transfer or winding-down of assets.

Question for consultations:

Question 4: Do you agree with the clarifications regarding the timelines for establishing an intermediate EU parent undertaking? In your view, are there any other circumstances when



establishing such undertaking may not be possible by the time the threshold of EUR 40 billion of the total value of assets is reached?

28. Where the conditions set out in Article 21b of Directive 2013/36/EU have been met and an intermediate EU parent undertaking has not been established within the timeline determined under point (b) of paragraph 25 and in accordance with paragraphs 26 or 27, the competent authorities of the institutions of that third-country group should, without undue delay, coordinate in order to take all the measures necessary to ensure that Article 21b of Directive 2013/36/EU will be complied with.
29. Where the total value of assets in the Union of a third-country group calculated in accordance with paragraph 10 and 11 has dropped significantly and permanently below the threshold set out in Article 21b(4) of Directive 2013/36/EU as a result of strategic changes in European operations of that third-country group, the consolidating supervisor and, where applicable, the group supervisor and the competent authorities should, following a relevant group's request, coordinate to determine whether the threshold should be deemed as not anymore exceeded before the end of the period of twelve consecutive quarters referred to in paragraph 14.

5. Accompanying documents

Cost-benefit analysis

A. Introduction

Article 21b of Directive 2013/36/EU was introduced in the new banking package to require third country groups with total activities in the EU above a certain threshold to establish an Intermediate EU Parent Undertaking (IPU). According to Article 21b(1) and (4) of Directive 2013/36/EU, the threshold is set at the level of EUR 40 billion³. Therefore, third-country groups that account with two or more institutions in the Union and reach the threshold shall have an IPU.

B. Policy objective

The guidelines aim at providing clarity on the practical application of the IPU requirement for the third-country groups as well as the competent authorities supervising their branches and subsidiaries in the EU. In particular, the guidelines provide a common methodology for the calculation of the total value of assets to be compared with the IPU threshold. Such common methodology is crucial for achieving consistent application of the Union law and the application of consolidated supervision to institutions based on the same criteria.

Moreover, the guidelines entail other transparency policy objectives, related to the publication in EBA website of a list of all third-country groups operating in the Union and their IPU. This transparency would ensure that market participants have clarity of the direct ownership of those institutions.

C. Baseline scenario

Paragraph (6) of the newly introduced Article 21b of Directive 2013/36/EU requires that competent authorities notify the EBA about: (i) the names and the total value of assets of supervised institutions belonging to a third-country group; (ii) the names and the total value of assets corresponding to branches authorised in the Member State and the types of activities that they are authorised to carry out; and (iii) the name and the type of any IPU set up in that Member State and the name of the third-country group of which it is part.

³ The calculation of the total value of assets in the Union includes both subsidiaries and branches of the third-country group. According to Article 21b(2) of Directive 2013/36/EU, competent authorities may allow to establish two IPUs, if there are requirements from the third country group of separation of activities or to reach a more efficient resolution strategy according to an assessment carried out by the resolution authority of the IPU.

Regarding the timeline, both addressees of the guidelines should comply with their obligations set in CRD V. Member States should implement the changes to Directive 2013/36/EU by 29 December 2020 and third-country groups operating in the Union that meet the IPU threshold on 27 June 2019 shall have an IPU or two IPUs by 30 December 2023⁴.

The Commission encouraged the EBA to provide guidance on certain technical aspects of the calculation of the IPU threshold, for instance: (i) how to determine the relevant cut-off date for the calculation of the total value of the assets in the EU and (ii) how to take into account the fluctuation in the amount of EU assets when calculating the threshold.

D. Options considered

The EBA considered the approach to calculate the threshold and the scope of the application, as well as time of establishing the IPU and the transitional arrangements. These two aspects (threshold and timing) are key to ensure that both competent authorities and institutions belonging to third-country groups comply with the IPU requirement in a timely manner.

Calculation of the threshold

Option 1: Based on monthly-average value of assets

Under this approach, the threshold is based on an average of the sum of total assets of the third-country group in the Union calculated over the twelve months of any calendar year. This approach is aligned with other existing provisions in the EU legislative framework (i.e. investment firms should be subject to the requirements of the Capital Requirements Regulation when a threshold of EUR 15 billion of the total value of consolidated assets is breached, calculated as the average of the previous 12 months⁵).

This approach avoids window-dressing strategies and would provide the stable level of significance of each third-country group within the EU, avoiding the impact of one-off events. However, monthly information on assets may not be available for all institutions, including investment firms, and branches of third-country groups. Therefore, more granular reporting might be required.

Option 2: Based on cut-off date

This approach was based on the year end audited financial statements and the requirement to establish the IPU if the threshold was breached during three consecutive quarters. This approach would not be effective in avoiding window-dressing strategies and would be sensitive to cut-off events. Moreover, the frequency of three quarters would not be aligned with other provisions of Directive 2013/36/EU related to the reporting requirements of third-country branches operating in the Union to competent authorities (i.e. Article 47 of Directive 2013/36/EU states that they should report annually financial information).

⁴ Article 21b(8) of Directive 2013/36/EU.

⁵ Article 1(2) of Regulation (EU) 2019/2033 (Investment Firms Regulation).

Option 3: Based on quarterly-average value of assets

This approach is more aligned with the normal frequency of reporting requirements in the EU established for institutions (i.e. on a quarterly basis). Therefore, the costs borne by institutions would be lower than with the monthly averages. Moreover, the requirement for quarterly averages avoids window-dressing strategies and the impact of one-off events, similarly as in Option 1.

Option 3 is the preferred option.

Specification of consolidated assets

Option 1: Total value of assets as on the balance sheet

This option will ensure the alignment with the requirements of Directive 2013/36/EU, as according to Article 21b(5) of that Directive the total value of assets of each institution in the Union of the third-country group should be based on its consolidated balance sheet, or individual balance sheet for cases where institutions' balance sheet is not consolidated. This option is also the simplest and the least burdensome for the institutions, as no additional corrections specifically for the purpose of the IPU requirement will be necessary.

Option 2: The value of assets excluding third country branches and subsidiaries

This option would focus strictly on the assets of the third-country groups in the Union. However, the exclusion of third country branches and subsidiaries of the third-country undertaking established in the EU would misrepresent the current magnitude of the EU established group. The activities in third countries can have both implications related to supervisory activities and in the event of resolution. Moreover, it would not be aligned with the applicable requirements to EU institutions, which are based on a consolidated basis.

Option 1 is the preferred option.

First applicability of the threshold under Article 21b(8) of Directive 2013/36/EU

Option 1: Total assets considered as a specific point in time as at 27 June 2019

From the literal interpretation of Article 21b(8) of Directive 2013/36/EU, the threshold of EUR 40 billion shall be complied as at 27 June 2019. Thus, the total value of assets of the third-country group in the EU should be considered in a specific point in time and not as an average. On one hand, this would be the simplest and more straightforward interpretation. However, a short term variation in assets due to market developments (or separation of assets) could entail that the obligation to establish an IPU is not justified.

Option 2: Total assets considered as an average since 2018

Under this option, the total value of assets as at 27 June 2019 should be consistent with the way the threshold is monitored. Therefore, as specified in the previous assessment of options, the threshold could be calculated as an average over the last four quarters.

Option 1 is the preferred option.

E. Cost-Benefit Analysis

The implementation of the guidelines entails costs for both competent authorities and firms established in the EU.

Regarding competent authorities, costs are expected to arise from the implementation of reporting standards to ensure that third country groups provide them at least on a quarterly basis all the information necessary for the purpose of notification in accordance with Article 21b(6) of Directive 2013/36/EU: (i) names and total value of assets of institutions belonging to a third country group, (ii) names and assets of branches authorized in the Member State, (iii) name and type of the EU parent undertaking and the third country group of which is part. This information should be notified to the EBA at least annually.

Moreover, they have to put in place processes and resources to comply with the mandate established in Article 21b(7) of Directive 2013/36/EU, which specifies that they are responsible for ensuring that every institution that is part of a third-country group meets one of the following conditions: (i) it has or it is an intermediate EU parent undertaking, (ii) it is the only institution within the EU of the third-country group or (iii) it is part of a third-country group with a total value of assets in the EU of less than EUR 40 billion.

The implementation also entail benefits for competent authorities, derived from the application of a consolidated supervisory approach of the EU activities of these institutions. Moreover, it facilitates an orderly resolution process where necessary.

Regarding firms, there are one-off costs related to the establishment of the intermediate EU parent undertaking if the threshold is met, mainly through the authorization process already envisaged in the EU prudential framework. Other costs are expected to arise from the application of processes to calculate quarterly averages of all assets in the EU of the third-country group and report them to competent authorities.

Among the benefits for firms are the increased clarity among market participants of the background of third-country branches and subsidiaries. This benefit comes from the fact that, under Article 21b(7) of Directive 2013/36/EU, the EBA shall disclose in the website the list of all third-country groups operating in the Union and their intermediate EU parent undertaking. Therefore, market participants could have access to the identity and the financial position of the intermediate EU parent undertaking.

The benefits for the single market are related to the enhanced level playing field among financial institutions about the requirements to operate in the EU, the increased strength of the overall EU banking sector, the removal of impediments to resolvability (by avoiding transfers of funds from the parent entity) and the reduced probability of banking crisis stemming from these entities.