

FINNIUS

At last, the Dutch implementation of IFD has been finalised!

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 5 MINUTES

As of 26 November 2021 the full implementation of the EU Investment Firm Directive (**IFD**) in the Netherlands is a fact.^[1] Almost five months after the official deadline IFD is now fully implemented in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*), the Dutch Prudential Rules Decree (*Besluit prudentiële regels Wft*) and rules promulgated thereby. See our summer blog post for further thoughts on late implementation [here](#) (Dutch only).

The implementation of IFD is a capstone of the new European prudential requirements framework for investment firms, which includes IFD and the accompanying Investment Firm Regulation (**IFR**)^[2]. Both came into force on 26 June 2021. As a directly applicable EU regulation, IFR already applies in the Netherlands as of 26 June 2021.

Four key questions that reflect the core of the new regulatory framework:

1. Which investment firms are in scope?

The new framework applies to investment firms which have obtained a license as an investment firm under the Markets in Financial Instruments Directive (**MiFID II**)^[3]. IFD and IFR distinguish three categories: class 1, class 2 and class 3 investment firms.

Class 1 investment firms, also referred to as systemically important investment firms, are considered banks under IFD and IFR and continue to fall under the amended European Capital Requirements Directive (**CRD**)^[4] and the European Capital Requirements Regulation (**CRR**)^[5]. Class 1 firms are – in short – own account dealer/underwriter investment firms with consolidated balance sheets exceeding certain thresholds (EUR 30 bn, EUR 15 bn or EUR 5 bn, as the case may be).

Class 3 investment firms are small and non-interconnected investment firms. Class 3 investment firms are firms of which a set of quantitative indicators is below certain thresholds. The below table sets out which thresholds an investment firm must all meet in order to classify as a class 3 firm:

Class 3 threshold

Risk to client

Assets under management (17 IFR)	<EUR 1.2 Bn
Client money held – Segregated (18 IFR)	0
Assets safeguarded and administered (19 IFR)	0
Client orders handled – Cash trades (20 IFR)	<EUR 100m per day
Client orders handled – Derivatives Trades (20 IFR)	<EUR 1bn per day
<i>Risk to market</i>	
Net positions risk requirement (22 and 23 IFR)	0
Clearing margin given (22 and 23 IFR)	0
<i>Risk to firm</i>	
Trading counterparty default (26 IFR)	0
Daily trading flow (33 IFR)	0
On? and off?balance?sheet total	<EUR 100m
Total annual gross revenue from investment services and activities (average over annual figures past 2 years)	<EUR 30m

Class 2 investment firms are investment firms that do not meet the criteria for class 1 and class 3.

2. Which new requirements apply?

The entry into force of the regulation, IFR, per 26 June 2021, already confronted class 2 and class 3 investment firms with new technical capital and liquidity requirements and disclosure rules. For instance, the class 2 investment firms minimum capital requirement is now the highest of (i) their initial capital, (ii) their fixed overheads requirement, and (iii) a new so-called K-factor requirement, which is a set of quantitative indicators applicable to that specific firm. Class 3 firms do not need to apply the K-factor requirement for calculation of capital (they do need to calculate the K-factors for categorisation purposes). As a result, the implementation of IFD has no material capital calculation impact for most Class 3 investment firms. What is new is that Class 2 and 3 firms now also have a requirement to retain a minimum amount of cash or other eligible liquid assets for a period of one third of their fixed overhead requirements (i.e. one month of fixed costs).

Furthermore, the implementation of IFD has an impact on the internal governance and risk and capital management requirements. The Class 2 and 3 firms will now have to comply with new or amended requirements regarding e.g., governance, preparation of the Internal Capital and Liquidity Adequacy Assessment Process, risk management and remunerations. In addition, IFR contains a number of substantial public disclosure requirements.

For our take on the new remuneration rules for investment firms under IFD and IFR, see our recent blog post [here](#). These new remuneration rules have been implemented into (new) Regulation on Sound Remuneration Policies 2021 (Rbb 2021), which entered into force on 19 October 2021.

3. Are MiFID II top-up fund managers also in scope?

Yes, unlike many other EU member states, the Dutch legislator has decided in the IFD Implementation Act to broaden the scope of certain capital requirements under IFD and IFR to include AIFM and UCITS fund managers that are also permitted to provide certain MiFID II service (MiFID II top-up). According to the legislator this is a continuation of the already existing prudential approach towards MiFID II top-up managers.

Still, this means that these fund managers e.g. must prepare an ICLAAP (taking into account a new liquidity component), will be subject to IFR capital requirements in relation to their MiFID II investment firm business, and must report to DNB under IFR. More detailed rules will be set by DNB (see the consultation version of DNB's [supervisory regime](#) (Dutch only)). For further information on the impact of the implementation of IFD for MiFID II top-up fund managers, see our blog post [here](#) (Dutch only)).

4. How about regulatory reporting?

Implementation of IFD also affects reporting by investment firms and fund managers with a MiFID II top-up. DNB [requests](#) these investment firms and fund managers to use new reporting templates

including a new taxonomy prepared by the European Banking Authority (EBA) and to submit these templates via the Digital Reporting Desk (DLR). This should already apply in relation to firms' Q3 2021 reporting.

[1] Following the entry into force of the Dutch Investment Firms Directive Implementation Act (*Implementatiewet prudentieel toezicht beleggingsondernemingen*) and the new Regulation on Sound Remuneration Policies 2021, both on 19 October 2021 and the Dutch Investment Firms Directive Implementation Decree (*Implementatiebesluit prudentieel toezicht beleggingsondernemingen*) on 26 November 2021.

[2] Regulation (EU) 2019/2033.

[3] Directive (EU) 2014/65.

[4] Directive (EU) 2013/36.

[5] Regulation (EU) 2013/575.

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