

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

[<sup>XI</sup>PART ONE

**GENERAL PROVISIONS**

[<sup>XI</sup>TITLE II

**LEVEL OF APPLICATION OF REQUIREMENTS**

CHAPTER 1

**Application of requirements on an individual basis**

*Article 6*

**General principles**

1 Institutions shall comply with the obligations laid down in Parts Two to Five and Eight on an individual basis.

[<sup>F1</sup>1a By way of derogation from paragraph 1 of this Article, only institutions identified as resolution entities that are also G-SIIs or that are part of a G-SII, and that do not have subsidiaries shall comply with the requirement laid down in Article 92a on an individual basis.

Material subsidiaries of a non-EU G-SII shall comply with Article 92b on an individual basis, where they meet all the following conditions:

- a they are not resolution entities;
- b they do not have subsidiaries;
- c they are not the subsidiaries of an EU parent institution.]

2 No institution which is either a subsidiary in the Member State where it is authorised and supervised, or a parent undertaking, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Articles 89, 90 and 91 on an individual basis.

3 No institution which is either a parent undertaking or a subsidiary, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Part Eight on an individual basis.

4 Credit institutions and investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall comply with the obligations laid down in Part Six on an individual basis. Pending the report from the Commission in accordance with Article 508(3), competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six taking into account the nature, scale and complexity of the investment firms' activities.

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5 Institutions, except for investment firms referred to in Article 95(1) and Article 96(1) and institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3), shall comply with the obligations laid down in Part Seven on an individual basis.

#### Textual Amendments

- F1** Inserted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

### Article 7

#### Derogation from the application of prudential requirements on an individual basis

1 Competent authorities may waive the application of Article 6(1) to any subsidiary of an institution, where both the subsidiary and the institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;
- b either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;
- c the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
- d the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

2 Competent authorities may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or a mixed financial holding company set up in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over institutions, and in particular to the standards laid down in Article 11(1).

3 Competent authorities may waive the application of Article 6(1) to a parent institution in a Member State where that institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State;
- b the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State.

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The competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

## Article 8

### **Derogation from the application of liquidity requirements on an individual basis**

1 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries in the Union and supervise them as a single liquidity sub-group so long as they fulfil all of the following conditions:

- a the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six;
- b the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity for all of these institutions;
- c the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they become due;
- d there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (c).

By 1 January 2014, the Commission shall report to the European Parliament and the Council on any legal obstacles which are capable of rendering impossible the application of point (c) of the first subparagraph and is invited to make a legislative proposal, if appropriate, by 31 December 2015, on which of those obstacles should be removed.

2 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries where all institutions of the single liquidity sub-group are authorised in the same Member State and provided that the conditions in paragraph 1 are fulfilled.

3 Where institutions of the single liquidity sub-group are authorised in several Member States, paragraph 1 shall only be applied after following the procedure laid down in Article 21 and only to the institutions whose competent authorities agree about the following elements:

- a their assessment of the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group;
- b the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group;
- c the determination of minimum amounts of liquid assets to be held by institutions for which the application of Part Six will be waived;
- d the need for stricter parameters than those set out in Part Six;
- e unrestricted sharing of complete information between the competent authorities;
- f a full understanding of the implications of such a waiver.

4 Competent authorities may also apply paragraphs 1, 2 and 3 to institutions which are members of the same institutional protection scheme as referred to in Article 113(7) provided that they meet all the conditions laid down therein, and to other institutions linked by a relationship referred to in Article 113(6) provided that they meet all the conditions laid down therein. Competent authorities shall in that case determine one of the institutions subject to the

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waiver to meet Part Six on the basis of the consolidated situation of all institutions of the single liquidity sub-group.

5 Where a waiver has been granted under paragraph 1 or paragraph 2, the competent authorities may also apply Article 86 of Directive 2013/36/EU, or parts thereof, at the level of the single liquidity sub-group and waive the application of Article 86 of Directive 2013/36/EU, or parts thereof, on an individual basis.

### *Article 9*

#### **Individual consolidation method**

1 Subject to paragraphs 2 and 3 of this Article and to Article 144(3) of Directive 2013/36/EU, the competent authorities may permit on a case-by-case basis parent institutions to incorporate in the calculation of their requirement under Article 6(1), subsidiaries which meet the conditions laid down in points (c) and (d) of Article 7(1) and whose material exposures or material liabilities are to that parent institution.

2 The treatment set out in paragraph 1 shall be permitted only where the parent institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

3 Where a competent authority exercises the discretion laid down in paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the other Member States of the use made of paragraph 1 and of the circumstances and arrangements referred to in paragraph 2. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country as well.

### *Article 10*

#### **Waiver for credit institutions permanently affiliated to a central body**

1 Competent authorities may, in accordance with national law, partially or fully waive the application of the requirements set out in Parts Two to Eight to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, if the following conditions are met:

- a the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;
- b the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;
- c the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Member States may maintain and make use of existing national legislation regarding the application of the waiver referred to in the first subparagraph as long as it does not conflict with this Regulation or Directive 2013/36/EU.

2 Where the competent authorities are satisfied that the conditions set out in paragraph 1 are met, and where the liabilities or commitments of the central body are entirely guaranteed

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by the affiliated institutions, the competent authorities may waive the application of Parts Two to Eight to the central body on an individual basis.

## CHAPTER 2

### Prudential consolidation

#### Section 1

#### Application of requirements on a consolidated basis

##### Article 11

#### General treatment

1 Parent institutions in a Member State shall comply, to the extent and in the manner prescribed in Article 18, with the obligations laid down in Parts Two to Four and Part Seven on the basis of their consolidated situation. The parent undertakings and their subsidiaries subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, they shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure a proper consolidation.

2 Institutions controlled by a parent financial holding company or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 18, with the obligations laid down in Parts Two to Four and Part Seven on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

Where more than one institution is controlled by a parent financial holding company or by a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the institution to which supervision on a consolidated basis applies in accordance with Article 111 of Directive 2013/36/EU.

3 EU parent institutions, institutions controlled by an EU parent financial holding company and institutions controlled by an EU parent mixed financial holding company shall comply with the obligations laid down in Part Six on the basis of the consolidated situation of that parent institution, financial holding company or mixed financial holding company, if the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC. Pending the report from the Commission in accordance with Article 508(2) of this Regulation, and if the group comprises only investment firms, competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six on a consolidated basis, taking into account the nature, scale and complexity of the investment firm's activities.

[<sup>F13a</sup> By way of derogation from paragraph 1 of this Article, only parent institutions identified as resolution entities that are G-SIIs, part of a G-SII or part of a non-EU G-SII shall comply with Article 92a of this Regulation on a consolidated basis, to the extent and in the manner set out in Article 18 of this Regulation.

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Only EU parent undertakings that are a material subsidiary of a non-EU G-SII and are not resolution entities shall comply with Article 92b of this Regulation on a consolidated basis to the extent and in the manner set out in Article 18 of this Regulation. Where Article 21b(2) of Directive 2013/36/EU applies, the two intermediate EU parent undertakings jointly identified as a material subsidiary shall each comply with Article 92b of this Regulation on the basis of their consolidated situation.]

4 Where Article 10 is applied, the central body referred to in that Article shall comply with the requirements of Parts Two to Eight on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions.

5 In addition to the requirements in paragraphs 1 to 4, and without prejudice to other provisions of this Regulation and Directive 2013/36/EU, when it is justified for supervisory purposes by the specificities of the risk or of the capital structure of an institution or where Member States adopt national laws requiring the structural separation of activities within a banking group, competent authorities may require the structurally separated institutions to comply with the obligations laid down in Parts Two to Four and Parts Six to Eight of this Regulation and in Title VII of Directive 2013/36/EU on a sub-consolidated basis.

Applying the approach set out in the first subparagraph shall be without prejudice to effective supervision on a consolidated basis and shall neither entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole nor form or create an obstacle to the functioning of the internal market.

#### Textual Amendments

- F1** Inserted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

#### Article 12

##### **Financial holding company or mixed financial holding company with both a subsidiary credit institution and a subsidiary investment firm**

Where a financial holding company or a mixed financial holding company has at least one credit institution and one investment firm as subsidiaries, the requirements that apply on the basis of the consolidated situation of the financial holding company or of the mixed financial holding company shall apply to the credit institution.

#### *f<sup>F1</sup>* Article 12a

##### **Consolidated calculation for G-SIIs with multiple resolution entities**

Where at least two G-SII entities belonging to the same G-SII are resolution entities, the EU parent institution of that G-SII shall calculate the amount of own funds and eligible liabilities referred to in point (a) of Article 92a(1) of this Regulation. That calculation shall be undertaken on the basis of the consolidated situation of the EU parent institution as if it were the only resolution entity of the G-SII.

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Where the amount calculated in accordance with the first paragraph of this Article is lower than the sum of the amounts of own funds and eligible liabilities referred to in point (a) of Article 92a(1) of this Regulation of all resolution entities belonging to that G-SII, the resolution authorities shall act in accordance with Articles 45d(3) and 45h(2) of Directive 2014/59/EU.

Where the amount calculated in accordance with the first paragraph of this Article is higher than the sum of the amounts of own funds and eligible liabilities referred to in point (a) of Article 92a(1) of this Regulation of all resolution entities belonging to that G-SII, the resolution authorities may act in accordance with Articles 45d(3) and 45h(2) of Directive 2014/59/EU.]

#### Textual Amendments

- F1** Inserted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

### [<sup>F2</sup>Article 13

#### Application of disclosure requirements on a consolidated basis

1 EU parent institutions shall comply with Part Eight on the basis of their consolidated situation.

Large subsidiaries of EU parent institutions shall disclose the information specified in Articles 437, 438, 440, 442, 450, 451, 451a and 453 on an individual basis or, where applicable in accordance with this Regulation and Directive 2013/36/EU, on a sub-consolidated basis.

2 Institutions identified as resolution entities that are G-SIIs or that are part of a G-SII shall comply with Article 437a and point (h) of Article 447 on the basis of the consolidated situation of their resolution group.

3 The first subparagraph of paragraph 1 shall not apply to EU parent institutions, EU parent financial holding companies, EU parent mixed financial holding companies or resolution entities where they are included in equivalent disclosures on a consolidated basis provided by a parent undertaking established in a third country.

The second subparagraph of paragraph 1 shall apply to subsidiaries of parent undertakings established in a third country where those subsidiaries qualify as large subsidiaries.

4 Where Article 10 applies, the central body referred to in that Article shall comply with Part Eight on the basis of the consolidated situation of the central body. Article 18(1) shall apply to the central body and the affiliated institutions shall be treated as subsidiaries of the central body.

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#### Textual Amendments

- F2** Substituted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

### Article 14

#### Application of requirements of Article 5 of Regulation (EU) 2017/2402 on a consolidated basis

1 Parent undertakings and their subsidiaries that are subject to this Regulation shall be required to meet the obligations laid down in Article 5 of Regulation (EU) 2017/2402 on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms required by those provisions are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that subsidiaries that are not subject to this Regulation implement arrangements, processes and mechanisms to ensure compliance with those provisions.

2 Institutions shall apply an additional risk weight in accordance with Article 270a of this Regulation when applying Article 92 of this Regulation on a consolidated or sub-consolidated basis if the requirements laid down in Article 5 of Regulation (EU) 2017/2402 are breached at the level of an entity established in a third country included in the consolidation in accordance with Article 18 of this Regulation if the breach is material in relation to the overall risk profile of the group.]

#### Textual Amendments

- F2** Substituted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

### Article 15

#### Derogation from the application of own funds requirements on a consolidated basis for groups of investment firms

1 The consolidating supervisor may waive, on a case-by-case basis, the application of Part Three of this Regulation and Title VII, Chapter 4 of Directive 2013/36/EU on a consolidated basis provided that the following conditions exist:

- a each EU investment firm in the group uses the alternative calculation of total risk exposure amount referred to in Article 95(2) or 96(2);
- b all investment firms in the group fall within the categories in Article 95(1) or 96(1);
- c each EU investment firm in the group meets the requirements imposed in Article 95 or 96 on an individual basis and at the same time deducts from its Common Equity Tier 1 items any contingent liability in favour of investment firms, financial institutions, asset

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- management companies and ancillary services undertakings, which would otherwise be consolidated;
- d any financial holding company which is the parent financial holding company in a Member State of any investment firm in the group holds at least enough capital, defined here as the sum of the items referred to in Articles 26(1), 51(1) and 62(1), to cover the sum of the following:
- (i) the sum of the full book value of any holdings, subordinated claims and instruments referred to in Article 36(1)(h) and (i), Article 56(1)(c) and (d), and Article 66(1)(c) and (d) in investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated; and
  - (ii) the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated;
- e the group does not include credit institutions.

Where the criteria in the first subparagraph are met, each EU investment firm shall have in place systems to monitor and control the sources of capital and funding of all financial holding companies, investment firms, financial institutions, asset management companies and ancillary services undertakings within the group.

2 The competent authorities may also apply the waiver if the financial holding companies holds a lower amount of own funds than the amount calculated under paragraph 1(d), but no lower than the sum of the own funds requirements imposed on an individual basis to investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated. For the purposes of this paragraph, the own funds requirement for investment undertakings of third countries, financial institutions, asset management companies and ancillary services undertakings is a notional own funds requirement.

#### *Article 16*

### **Derogation from the application of the leverage ratio requirements on a consolidated basis for groups of investment firms**

Where all entities in a group of investment firms, including the parent entity, are investment firms that are exempt from the application of the requirements laid down in Part Seven on an individual basis in accordance with Article 6(5), the parent investment firm may choose not to apply the requirements laid down in Part Seven on a consolidated basis.

#### *Article 17*

### **Supervision of investment firms waived from the application of own funds requirements on a consolidated basis**

1 Investment firms in a group which has been granted the waiver provided for in Article 15 shall notify the competent authorities of the risks which could undermine their financial

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positions, including those associated with the composition and sources of their own funds, internal capital and funding.

2 Where the competent authorities responsible for the prudential supervision of the investment firm waive the obligation of supervision on a consolidated basis as provided for in Article 15, they shall take other appropriate measures to monitor the risks, in particular large exposures, of the whole group, including any undertakings not located in a Member State.

3 Where the competent authorities responsible for the prudential supervision of the investment firm waive the application of own funds requirements on a consolidated basis as provided for in Article 15, the requirements of Part Eight shall apply on an individual basis.

## Section 2

### Methods for prudential consolidation

[<sup>F2</sup>Article 18]

#### Methods of prudential consolidation

1 The institutions that are required to comply with the requirements referred to in Section 1 on the basis of their consolidated situation shall carry out a full consolidation of all institutions and financial institutions that are its subsidiaries or, where relevant, the subsidiaries of the same parent financial holding company or parent mixed financial holding company. Paragraphs 2 to 8 of this Article shall not apply where Part Six applies on the basis of an institution's consolidated situation.

[<sup>F1</sup>For the purposes of Article 11(3a), institutions that are required to comply with the requirements referred to in Article 92a or 92b on a consolidated basis shall carry out a full consolidation of all institutions and financial institutions that are their subsidiaries in the relevant resolution groups.]

2 However, the competent authorities may on a case-by-case basis permit proportional consolidation according to the share of capital that the parent undertaking holds in the subsidiary. Proportional consolidation may only be permitted where all of the following conditions are fulfilled:

- a the liability of the parent undertaking is limited to the share of capital that the parent undertaking holds in the subsidiary in view of the liability of the other shareholders or members;
- b the solvency of those other shareholders or members is satisfactory;
- c the liability of the other shareholders and members is clearly established in a legally binding way.

3 Where undertakings are linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, the competent authorities shall determine how consolidation is to be carried out.

4 The consolidating supervisor shall require the proportional consolidation according to the share of capital held of participations in institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of those undertakings is limited to the share of the capital they hold.

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5 In the case of participations or capital ties other than those referred to in paragraphs 1 and 4, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

6 The competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

- a where, in the opinion of the competent authorities, an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in these institutions; and
- b where two or more institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

7 EBA shall develop draft regulatory technical standards to specify conditions according to which consolidation shall be carried out in the cases referred to in paragraphs 2 to 6 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

8 Where consolidated supervision is required pursuant to Article 111 of Directive 2013/36/EU, ancillary services undertakings and asset management companies as defined in point (5) of Article 2 of Directive 2002/87/EC shall be included in consolidations in the cases, and in accordance with the methods, laid down in this Article.

[<sup>F19</sup> EBA shall develop draft regulatory technical standards to specify conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and paragraph 8.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.]

#### Textual Amendments

- F1** Inserted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).
- F2** Substituted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding

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ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

## Section 3

### Scope of prudential consolidation

#### Article 19

#### Entities excluded from the scope of prudential consolidation

1 An institution, a financial institution or an ancillary services undertaking which is a subsidiary or an undertaking in which a participation is held, need not be included in the consolidation where the total amount of assets and off-balance sheet items of the undertaking concerned is less than the smaller of the following two amounts:

- a EUR 10 million;
- b 1 % of the total amount of assets and off-balance sheet items of the parent undertaking or the undertaking that holds the participation.

2 The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111 of Directive 2013/36/EU may on a case-by-case basis decide in the following cases that an institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

- a where the undertaking concerned is situated in a third country where there are legal impediments to the transfer of the necessary information;
- b where the undertaking concerned is of negligible interest only with respect to the objectives of monitoring institutions;
- [<sup>x2</sup>c where, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of institutions are concerned.]

3 Where, in the cases referred to in paragraph 1 and point (b) of paragraph 2, several undertakings meet the criteria set out therein, they shall nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the specified objectives.

#### Editorial Information

- X2** Substituted by [Corrigendum to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012 \(Official Journal of the European Union L 176 of 27 June 2013\) \(Corrected version in Official Journal of the European Union L 321 of 30 November 2013\).](#)

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## Article 20

### Joint decisions on prudential requirements

- 1 The competent authorities shall work together, in full consultation:
  - a in the case of applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article 363 respectively submitted by an EU parent institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject;
  - b for the purposes of determining whether the criteria for a specific intragroup treatment as referred to in Article 422(9) and Article 425(5) complemented by the EBA regulatory technical standards referred to in Article 422(10) and Article 425(6) are met.

Applications shall be submitted only to the consolidating supervisor.

The application referred to in Article 312(2), shall include a description of the methodology used for allocating operational risk capital between the different entities of the group. The application shall indicate whether and how diversification effects are intended to be factored in the risk measurement system.

- 2 The competent authorities shall do everything within their power to reach a joint decision within six months on:
  - a the application referred to in point (a) of paragraph 1;
  - b the assessment of the criteria and the determination of the specific treatment referred to in point (b) of paragraph 1.

This joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in paragraph 1.

- 3 The period referred to in paragraph 2 shall begin:
  - a on the date of receipt of the complete application referred to in point (a) of paragraph 1 by the consolidating supervisor. The consolidating supervisor shall forward the complete application to the other competent authorities without delay;
  - b on the date of receipt by competent authorities of a report prepared by the consolidating supervisor analysing intragroup commitments within the group.

- 4 In the absence of a joint decision between the competent authorities within six months, the consolidating supervisor shall make its own decision on point (a) of paragraph 1. The decision of the consolidating supervisor shall not limit the powers of the competent authorities under Article 105 of Directive 2013/36/EU.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period.

The decision shall be provided to the EU parent institution, the EU parent financial holding company or to the EU parent mixed financial holding company and the other competent authorities by the consolidating supervisor.

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If, at the end of the six-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision on point (a) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

5 In the absence of a joint decision between the competent authorities within six months, the competent authority responsible for the supervision of the subsidiary on an individual basis shall make its own decision on point (b) of paragraph 1.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six-month period.

The decision shall be provided to the consolidating supervisor that informs the EU parent institution, the EU parent financial holding company or the EU parent mixed financial holding company.

If, at the end of the six-month period, the consolidating supervisor has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority responsible for the supervision of the subsidiary on an individual basis shall defer its decision on point (b) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

6 Where an EU parent institution and its subsidiaries, the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach referred to in Article 312(2) or an IRB Approach referred to in Article 143 on a unified basis, the competent authorities shall allow the qualifying criteria set out in Articles 321 and 322 or in Part Three, Title II, Chapter 3, Section 6 respectively to be met by the parent and its subsidiaries considered together, in a way that is consistent with the structure of the group and its risk management systems, processes and methodologies.

7 The decisions referred to in paragraphs 2, 4 and 5 shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

8 EBA shall develop draft implementing technical standards to specify the joint decision process referred to in point (a) of paragraph 1 with regard to the applications for permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 with a view to facilitating joint decisions.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

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## Article 21

### Joint decisions on the level of application of liquidity requirements

1 Upon application of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company or a sub-consolidating subsidiary of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company, the consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in a Member State shall do everything within their power to reach a joint decision on whether the conditions in points (a) to (d) of Article 8(1) are met and identifying a single liquidity sub-group for the application of Article 8.

The joint decision shall be reached within six months after submission by the consolidating supervisor of a report identifying single liquidity sub-groups on the basis of the criteria laid down in Article 8. In the event of disagreement during the six-month period, the consolidating supervisor shall consult EBA at the request of any of the other competent authorities concerned. The consolidating supervisor may consult EBA on its own initiative.

The joint decision may also impose constraints on the location and ownership of liquid assets and require minimum amounts of liquid assets to be held by institutions that are exempt from the application of Part Six.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be submitted to the parent institution of the liquidity subgroup by the consolidating supervisor.

2 In the absence of a joint decision within six months, each competent authority responsible for supervision on an individual basis shall take its own decision.

However, any competent authority may during the six-month period refer to EBA the question whether the conditions in points (a) to (d) of Article 8(1) are met. In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010 and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision taking into account the proportionality of benefits and risks at the level of the Member State of the parent institution and the proportionality of benefits and risks at the level of the Member State of the subsidiary. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

The joint decision referred to in paragraph 1 and the decisions referred to in the second subparagraph of this paragraph shall be binding.

3 Any relevant competent authority may also during the six-month period consult EBA in the event of a disagreement on the conditions in points (a) to (d) of Article 8(3). In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010, and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision.

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## Article 22

### Sub-consolidation in cases of entities in third countries

Subsidiary institutions shall apply the requirements laid down in Articles 89 to 91 and Parts Three and Four on the basis of their sub-consolidated situation if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution as a subsidiary in a third country, or hold a participation in such an undertaking.

## Article 23

### Undertakings in third countries

For the purposes of applying supervision on a consolidated basis in accordance with this Chapter, the terms 'investment firm', 'credit institution', 'financial institution', and 'institution' shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4.

## Article 24

### Valuation of assets and off-balance sheet items

- 1 The valuation of assets and off-balance sheet items shall be effected in accordance with the applicable accounting framework.
- 2 By way of derogation from paragraph 1, competent authorities may require that institutions effect the valuation of assets and off-balance sheet items and the determination of own funds in accordance with the international accounting standards as applicable under Regulation (EC) No 1606/2002.]

#### Editorial Information

- X1** Substituted by [Corrigendum to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012 \(OJ L 176, 27.6.2013, p. 1\)](#).

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