

Single Rulebook Q&A

Question ID	2021_5711
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	81, 82
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	02/02/2021
Published as Final Q&A	03/12/2021
Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	Eligibility of minority interests
Question	When it comes to subsidiaries which are institutions or investments firms established in third countries, are minority interests eligible for the purpose of their recognition in prudential own funds as per Article 81 (for CET1) or Article 82 (for AT1 and T2)?
Background on the question	In addition to subsidiaries that are institution entities, Article 81 and Article 82 CRR (as amended by regulation 2019/2033) ruling for the recognition of minority interests into prudential own funds has been extended to new type of entities, namely: (i) Investment firms, (ii) Intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of the amended CRR on a sub-consolidated basis, or an intermediate investment holding company that is subject to the requirements of Regulation (EU) 2019/2033 on a consolidated basis, (iii) intermediate financial holding company in a third country, provided that that intermediate financial holding company is subject to prudential requirements as stringent as those applied to credit institutions of that third country and provided that the Commission has adopted a decision in accordance with Article 107(4) determining that those prudential requirements are at least equivalent to those of the CRR. At the same time, the definitions of an institution and of an

	<p>investment firm have been amended with Article 4 CRR. An “institution” means a credit institution authorised under Article 8 CRD or an undertaking as referred to in Article 8a(3) thereof (i.e. investment firms above specific thresholds). An “investment firm” means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU (MIFID), which is authorized under that Directive but excludes credit institutions. As such, the strict reading of the only Article 81 would mean that, while applicable for non-EU intermediate financial holding company, the recognition of minority interests in non-EU institutions and investment firms as long as they are established in a third country whose prudential requirements have been recognized as EU equivalent by the Commission is not allowed per se. For a given EU equivalent country, on the one hand a subsidiary in the form of an intermediate financial holding company would thus be eligible for minority interests recognition when on the other hand a subsidiary in the form of an institution would not be eligible, creating prudential inconsistency. Instead, Articles 84, 85 and 87 CRR that rule for the calculation of eligible minority interests apply to subsidiaries established in any third countries, regardless of the EU equivalence, since referring to “any additional local supervisory regulations in third countries insofar as those requirements are to be met by [CET1/T1/own funds]” (mentioned in point (1) (a) (i) and (ii) of each of these articles).</p>
<p>Final answer</p>	<p>For the purposes of Title II of Part Two of Regulation (EU) No 575/2013, the terms ‘investment firm’ and ‘institution’ also apply to undertakings established in third countries, which, were they established in the Union, would fall under the definitions of those terms in Article 4(1), points (2) and (3), of that Regulation.</p> <p>Disclaimer:</p> <p>The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5711</p>

