

Single Rulebook Q&A

Question ID	2021_5832
Status	Final Q&A
Legal act	Directive 2013/36/EU (CRD)
Topic	Other issues
Article	21a
Paragraph	6
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
Date of submission	29/04/2021
Published as Final Q&A	03/03/2023
Disclose name of institution / entity	Yes
Name of institution / submitter	National Bank of Belgium / ACPR - Banque de France
Country of incorporation / residence	Belgium / France
Type of submitter	Competent authority
Subject matter	Scope of Article 21a(6) CRD
Question	<p>What is the scope of application of the supervisory measures that can be imposed under Article 21a(6) CRD?</p> <p>Does it encompass for instance measures to address capital, large exposures, liquidity and internal model breaches?</p>
Background on the question	<p>Directive 2013/36/EU as amended by Directive (EU) 2019/878 (hereinafter “CRD”) and Regulation (EU) 575/2013 as amended by Regulation (EU) 2019/876 (hereinafter “CRR”) establish/introduce a new regulatory regime for Financial Holding Companies (hereinafter “FHCs”). Under this new regime, in order to ensure the application of prudential requirements on a consolidated basis, these requirements are directly applicable to the FHC (see for instance recital 3 of the Directive (EU) 2019/878); whereas the old regime allowed for the indirect inclusion of FHCs in the prudential scope. In</p>

developing a legal framework that provides for a supervisory regime good practices recommend distinguishing between the following phases/aspects: - the authorisation/approval phase, distinguishing between the procedural phase (application, information to be provided, deadline for decision, etc.) and the conditions for obtaining authorisation/approval; - the “post-authorisation/approval” phase, in which requirements are set that apply during the lifetime of the regulated entity (“ongoing requirements”), it being understood that the conditions set for obtaining the status (authorisation/approval) must naturally be met on an ongoing basis, i.e. at all times; - in order to ensure the effectiveness of all the requirements forming the legal status concerned, the supervisory authority is in principle conferred a series of prerogatives ranging from collecting information, possibly by means of inspections, to adopting so-called corrective measures aimed at remedying a situation of proven or pending breaches of “prudential” requirements, and thus ensuring that an institution complies at all times with the prudential requirements forming the legal status concerned. As introduced by Directive (EU) 2019/878, Article 21a provides the conditions for approval of FHCs under paragraph (3) (i.e. the authorisation/approval phase), as well as the supervisory powers under paragraph (6) to directly impose supervisory measures during the post-authorisation/approval phase to the FHC, it being the entity responsible for compliance with the requirements of the CRR and the Directive on a consolidated basis.

Final answer

Article 21a of Directive 2013/36/EU (CRD) creates a specific approval framework, the purpose of which is to strengthen bank group supervision. It has a narrower scope compared to provisions on group supervision and it takes into account the specific nature of financial holding companies and mixed financial holding companies as non-regulated entities.

The list of supervisory measures listed in Article 21a(6) CRD is not exhaustive and supervisors can use additional measures in relation to financial holding companies or mixed financial holding companies, where it is necessary to ensure or restore the continuity and integrity of consolidated supervision and to ensure the compliance with the requirements laid down in the CRD and in Regulation (EU) No 575/2013. However, these measures apply only to decisions on re-establishing compliance with the conditions for approval referred to in Article 21a(3) CRD and do not encompass any other decisions related to the prudential supervision of the financial holding companies and mixed financial holding companies on a consolidated basis.

The adoption of the above mentioned supervisory measures is subject to the procedure laid down in Article 21a(8), (9) and (10).

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

	<i>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.</i>
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5832

European Banking Authority, 03/12/2023
www.eba.europa.eu