

Single Rulebook Q&A

Question ID	2013_310
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Other issues
Article	4
Paragraph	1
Subparagraph	26
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/a
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Disclose name of institution / entity	No
Type of submitter	Industry association
Subject matter	Prudential Consolidation of Financial Institutions
Question	<p>'Financial Institution' means an undertaking other than an institution, the principle activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex 1 to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (1), and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/E. The definition in Article 4(1)(26) Regulation 575/2013 is in line with the definition of financial institution under Article 4(5) of Directive 2006/48/EC in that it encompasses firms whose principle activity is to acquire holdings or to perform the activities under Annex 1 of Directive 2013/36/EU. The EU had issued guidance on its Your Question on Legislation ('YQOL') site that indicated that, for Article 4(5) of 2006/48/EC it was correct to consider holding companies as financial institutions. We understand that this has been interpreted differently by different regulators in the EU, in particular, where a bank owns shares in a holding company that owns a non-financial group (i.e. a group that does not undertake an Annex 1</p>

	<p>activity), certain regulators have taken the view that the holding company as a legal entity should be consolidated for regulatory capital purposes whilst the non-financial subsidiaries are deconsolidated. However, other regulators have considered the nature of the activities of the group (holding company plus non-financial subsidiaries) and determined that the holding company need not be consolidated. Could the EBA please clarify which interpretation is correct?</p>
Background on the question	<p>As per the strict definition all holding companies, even those that are not parents of financial institutions or institutions, or any other financial sector entity, will be captured as financial institutions.</p>
EBA answer	<p>Article 18(1) of Regulation (EU) No. 575/2013 (CRR) requires institutions to carry out a full consolidation of all institutions and financial institutions which are its subsidiaries for the application of prudential requirements on a consolidated basis.</p> <p>Undertakings, other than institutions and financial institutions which neither acquire holdings nor pursue any of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU (CRD), are excluded from the scope of prudential consolidation irrespective of whether or not these undertakings are directly or indirectly held by the parent entity. As a result:</p> <ul style="list-style-type: none"> • Non-financial subsidiaries are excluded from the scope of prudential consolidation regardless of whether these subsidiaries are fully held by a holding company. On the other hand, the holding company is included for prudential consolidation purposes; • Conversely, any holding company needs consolidating even when it holds no participation in a financial subsidiary. However, all its participations are excluded for prudential consolidation purposes. <p>DISCLAIMER:</p> <p>This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General for Internal Market and Services) has prepared the answer, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. This is an unofficial opinion of that Directorate General, which the European Banking Authority publishes on its behalf. The answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&As, for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.</p>
Link	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_310</p>

