

Single Rulebook Q&A

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Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Market risk
Article	325b
Paragraph	2, 3
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	-
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Country of incorporation / residence	Germany
Type of submitter	Accounting firm
Subject matter	Interpretation of Article 325b of Regulation (EU) No 575/2013 (CRR)
Question	<p>1. Are the conditions set out in Article 325b (2) CRR conditions that have to be simultaneously met with respect to every single institution and undertaking (parent and subsidiaries) no matter whether it holds positions that shall actually be offset on a consolidated basis? 2. Analogously, are the conditions set out in Article 325b (3) CRR conditions that have to be simultaneously met with respect to every single undertaking in a third country no matter whether it holds positions that shall actually be offset on a consolidated basis?</p>
Background on the question	<p>Article 325b CRR sets out allowances for consolidated requirements. For the purpose of calculating own funds requirements for market risks and under certain conditions set out in paragraphs 2 and 3 thereof, a parent institution may within a group use positions in one institution or undertaking to offset positions in another institution or undertaking, thus effectively reducing own</p>

funds requirements for market risk. The questions stated here aim at clarifying the meaning and scope of those conditions. In particular, the conditions set forth in Article 325b (2), (3) CRR allow for two interpretations: I. The conditions have to be met for the group as a whole, i. e. not making precise distinctions between those institutions or undertakings, which hold positions that shall actually be offset against each other across legal entities, and those, which do not hold such positions. II. The conditions have to be met only for those institutions or undertakings, which hold positions that shall actually be offset against each other across legal entities. The distinction between these two interpretations is relevant. For example, assume a parent institution P with three subsidiaries A, B and C located in the same country. Further assume the condition in Article 325b (2) point (a) is met with respect to all of them. Finally assume, that only P, A and B operate in a regulatory, legal and contractual framework that guarantees mutual financial support between them, but C does not. That is, the condition set out in Article 325b (2) point (b) is met only with respect to P, A and B, but not with respect to C. According to interpretation I, there may be no offsetting of positions across legal entities at all. In particular, positions held by A and held by B must not be offset, even if this were feasible with the remaining rules set forth in chapters 2 to 5 of Part III Title IV CRR. According to the interpretation II, there must be no offsetting of positions held by C with any position held by P, A or B. However, positions held by P, A or B may be offset where the remaining rules set forth in chapters 2 to 5 of Part III Title IV CRR are fulfilled. Apparently, interpretation I is more conservative than interpretation II and leads to higher own funds requirements on a consolidated basis by restricting the use offsetting effects. The questions ask which interpretation is correct.

Final answer

Interpretation II, posited above, is correct. Article 325b of Regulation (EU) No. 575/2013 (CRR) allows for the possibility to compute own funds requirements for market risk based on the net positions that result from the consolidation subject to the provisions of Article 325b (2) and, in particular, to the permission of the competent authorities.

Article 325b (1) specifies that this option is available only for the purpose of calculating net positions and own funds requirements in accordance with this Title 19, therefore for market risk only.

Furthermore, it makes clear that the scope of institutions or undertakings of a group, to which Article 325b applies, is restricted to institutions or undertakings that hold positions subject to own funds requirement for market risk and for which the group intends to apply the treatment laid out in Article 325b.

In particular, an own funds requirement for market risk has to be computed separately on a consolidated basis for the positions of subsidiaries that:

- do not form part of the institutions of the group for which the permission referred to in Article 325b (2) is requested; or
- do not meet the requirements of Article 325b (2).

	<p>In light of the above, Article 325b (2)(a) and (b) and Article 325b (3)(a), (b) and (c) of CRR refer specifically to the institutions and undertakings within the group mentioned in Article 325b (1) for which positions may be used to offset positions in another institution or undertakings within the group. Only these specific institutions therefore need to meet these conditions.</p> <p>Article 325b (3) of the CRR addresses the specific issue of undertakings located in third countries and specifies, in particular, that such undertakings should comply with own funds requirements equivalent to CRR requirements and that no regulations should exist in these third countries which might significantly affect the transfer of funds within the group.</p>
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