Single Rulebook Q&A

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Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	11, 18
Paragraph	2
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	-
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Name of institution / submitter	Banco Santander, S.A.
Country of incorporation / residence	Spain
Type of submitter	Credit institution
Subject matter	Capital requirements for a subgroup integrated by a parent holding company in a Member State and its institutions and subsidiary financial institutions
Question	What are the capital requirements for the subgroup and/or any of the undertakings included in it if the Member State: i) imposes capital requirements for the holding company by virtue of a national law? ii) does not impose any additional requirements to those in the CRR? As it is explained in the “background on the question”, we understand that for the second question (ii), the following topics must be clarified: a) What is the scope of the sub-consolidation, i.e. which companies need to be included in the respective sub-consolidation group? b) Are the capital requirements to be applied at the “subsidiary institution” level or at the “parent holding in the member state” level?
Background on the question	a) Capital requirements if the parent holding company is subject to CRR/CRD4 by virtue of national law The competence of the Member States

for establishing capital requirements for the parent holding company in a member state by virtue of national law is in our opinion expressly recognised in the CRR, Recital 38 and Articles 81 and 82. In Recital 38 it is mentioned that minority interests arising from intermediate holding companies subject to capital requirements can be recognised at a consolidated level. On the other hand, Article 81 established that minority interests can only be recognised if the issuer is: i) an undertaking subject by national law to the requirements of the CRR/CRD, or ii) an institution (in a similar way, Article 82 defines the qualifying AT1, T2 and total own funds of a subsidiary). Then, if the Member State imposes the said capital requirements to the holding company, we understand that the sub-consolidation and the calculation of capital adequacy must be carried on as if the holding company were an institution, for this purpose, that is to say, the holding and all their subsidiary institutions or financial institutions must be included in the perimeter of capital requirement consolidation and both the capital requirements and the capital (CET1, Tier 1 and total own funds) be calculated from these consolidated financial statements. b) Capital requirements if there is not a national law Article 11(2) establishes that if there is a parent holding company in a Member State the obligations derived from the CRR/CRD apply to one financial subsidiary (selected according criteria established in the same article and in Article 111 of the CRD) on the basis of the sub-consolidated financial situation of the holding company. In view of the former regulation, we pose these questions in the belief that clarification is needed about the additional requirements imposed by the hypothetical Member State´s decision of subjecting the holding company to the obligations of the CRR/CRD. We understand that the additional requirements can only be the consequence of a different scope of consolidated entities and/or the level (financial subsidiary or parent holding company) in which the capital is required and that guidance on the interpretation of several articles of the CRR is needed to fully understand the substance of the Member State´s competences in this matter. These ideas are developed in the following paragraphs. Scope of consolidation The first topic in need of clarification is then, what is the scope of the sub-consolidation according to the CRR, i.e. which companies need to be included in the respective sub-consolidation group? The scope of consolidated entities is defined by Article 11(2) and Article 18 (1) of the CRR. According to Article 11(2) the subsidiary financial institution will be required to 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. In defining the extent and manner of consolidation, Article 18 of the CRR states which companies shall form the consolidated group: 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

mixed parent financial holding company. Thus, according to Article 18, all institutions and financial institutions which are subsidiaries of the holding form part of the relevant sub-consolidation group, but the parent financial holding company is itself not subject to consolidation, because it is neither the institution “required to comply” nor a subsidiary of the said institution or of the same parent financial holding company. Consequently, the CRR determines that the capital requirements are calculated from the balance sheet obtained through a “horizontal” consolidation of the said companies. In this way it is assured that there are not capital inefficiencies due to reciprocal capital holdings or any other intragroup operations and that the aggregated capital of the consolidated institutions and financial institutions is sufficient according to the CRR/CRD to cover all the requirements derived from the risk weighted assets of all the consolidated companies. It is worth mentioning that this is not the only case in which such a consolidation procedure is established by the rules of the CRR, as the same method seems also to be the one to apply when the undertakings are linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC following Article 18(3). So, if the former is the right interpretation of Article 18, the Member State´s competence to impose “the requirements of this Regulation and Directive 2013/36/EU” has content and it may affect the structure of the group. As it has been mentioned in point (a) there would be capital requirements for the holding company by virtue of national law in addition to the ones established in the CRR for the “obliged institution” and these requirements for the holding would not be the same as the requirements for the “institution” due to the modification of the scope of sub-consolidation. Level in which the capital requirements must be fulfilled The second topic that must be clarified is if the capital requirements derived from the consolidation have to be applied at the subsidiary institution level or at the parent holding level (i. e. which company must have the amount of required CET1, Tier 1, total own funds). Note that this question only applies if Article 18 is not interpreted as in the previous point and consequently it is concluded that the parent holding company is in the consolidation scope by virtue of the CRR. The Article 11(2) establishes: “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”. According to the wording of the Article, the undertaking to which the obligations of the CRR/CRD are applied is the “institution” and so the literal interpretation seems to be that the comparison to determine if there is any capital shortage must be done between the CET1, Tier 1, total own funds of

	the “institution” and the calculated capital requirements. Consequently, only the “institution” is subject to requirements and the capital figures of the parent holding are not relevant as there is not any capital requirement at the parent holding level. Then, the member state´s hypothetical decision to subject the holding to the requirements of CRR/CRD, again has content as it imposes additional capital requirements (even if Article 18 is not interpreted as in the previous point i.e. it is concluded that the parent holding company is in the consolidation scope by virtue of the CRR) because the parent holding is also obliged to maintain a minimum amount of capital (in addition of the obligation of the subsidiary institution).
Final answer	"Holding company" is not a defined term under Regulation (EU) No 575/2013 (CRR). Article 11(2) of the CRR is directed at institutions as its addressees and sets out that these have to meet certain requirements on the basis of the consolidated situation of their parent financial holding company or parent mixed financial holding company in a Member State to the extent and manner prescribed in Article 18. Consequently, if the "holding company" is a financial holding company or a mixed financial holding company in a Member State, Article 11(2) will force institutions to meet certain requirements of the CRR on the basis of the consolidated situation of that holding company. Otherwise, the holding company is irrelevant for the purpose of Article 11(2). If a Member State decides to apply all the prudential requirements set out in CRD and CRR by virtue of national law to a holding company, for the purpose of Article 11(2) nothing changes. Subjecting an undertaking to the requirements of CRR by virtue of national law does not make that undertaking an institution from the CRR's point of view (the rule that if an undertaking is an institution, CRR applies to it, does not mean that if CRR applies by virtue of national law to an undertaking it therefore becomes an institution). Therefore, the holding company remains what it is - it is either a financial holding company or mixed financial holding company or it is another entity to which Article 11(2) does not refer. **DISCLAIMER:** This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General for Financial Stability, Financial services and Capital Markets Union) 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.
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