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Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
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	Competent authority
Subject matter	Definition of a financial institution
Question	<p>Following the corrigendum of November 30 2013, the definition of a “financial sector entity” (FSE) was modified, however, the definition of a “financial institution” (FI) remained unchanged. We seek clarification for the following two main issues: 1) Clarification is sought on whether all “undertakings other than institutions, the principal activity of which is to acquire holdings” - irrespective of whether the holdings in question relate to undertakings in- or outside of the financial sector - qualify as a financial institution (FI) (and accordingly as a financial sector entity (FSE) pursuant to Article 4(1)(27) of Regulation (EU) No 575/2013 (CRR)) for prudential consolidation purposes and also for purposes of capital deductions for investments in FSEs. 2) As the CRR does not give a definition of what “principal activity” means in relation to FI, there is room for interpretation leading to divergent treatment across Member States - 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 activity under Annex 1 of Directive 2013/36/EU (CRD)). We seek clarification on whether an undertaking’s principal activity (e.g. to acquire holdings) needs to be determined on an individual basis (i.e. also in the case of holding companies) or whether it can be determined on the basis of its consolidated situation (i.e. including the</p>

	<p>holding company plus its non-financial subsidiaries and holdings) and by taking into account all relevant qualitative and quantitative criteria (e.g. proportion of assets, of profits and of capital resulting from the acquisition of holdings versus operating activities, including activities listed in Annex I to CRD; human resources deployed; etc) on group level.</p>
<p>Background on the question</p>	<p>Background Question 1: In the Corrigendum a Mixed-Activity Holding Companies (MAHC) and Mixed-Activity Insurance Holding Companies (MAIHC) (formerly Article 4(1) (27) (i) and (j) CRR) have been excluded from the list of FSEs but the definition of FI remained unchanged. By consequence it would seem that all holding companies including MAHC (but excluding MAIHC which have also been excluded from the FI-definition) “still” qualify as FI and direct holdings of capital instruments of FI (and MAHC) will have to be deducted from the own funds of institutions under the CRR (see also Question ID 310 which relates to Prudential Consolidation of FI).</p> <p>Background Question 2: Many non-financial sector entities in which institutions have investments use the holding structure to manage their global operations and do not hold any capital instruments issued by an institution. We think that the assessment of the principal activity should take into account the nature of the activities of the whole group, viz should be done from the consolidated perspective of the holding company. Thus, there would be a distinction between holding companies, whose “principal activity” is the acquisition of holdings for investment purposes (and which act as a “financial investor”) and such holding companies, which pursue management tasks for its industrial or manufacturing subsidiaries or holdings and whose “principal activity” is the (operative) group management in the role of a “strategic investor”. By focusing on the consolidated basis an equal treatment of investments in industrial groups headed by a holding company and investments in operating companies of the industrial sector is ensured (the risks at stake are the same).</p>
<p>Final answer</p>	<p>Based on the structure of definitions in Article 4(26) and 4(27) and the aim of the deductions set out in Article 36, it appears to follow that the part of the definition of "financial institution" in Article 4(26) that refers to the principal activity of acquiring holdings does not include purely industrial holding companies.</p> <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</p>

	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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